7-3-90
Vol. 55 No. 128

federal register

Tuesday
July 3, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

7-3-90
Vol. 55 No. 128
Pages 27441-27626

federal register

Tuesday
July 3, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5805 (Amended by Proc. 6152)....27441
6142 (Amended by Proc. 6152)....27441
6152....27441
5153....27447
5154....27449
Executive Orders:
12718....27451
Administrative Orders:
Memorandums:
June 6, 1990....27453

14 CFR
13....27547
39 (2 documents)....27457, 27458
71....27460
Proposed Rules:
39 (4 documents)....27470–27473
71....27474

17 CFR
401....27461

21 CFR
1316....27464
Proposed Rules:
58....27476

24 CFR
50....27598
961....27598

30 CFR
Proposed Rules:
710....27588

33 CFR
110....27464

38 CFR
36....27465

43 CFR
Public Land Orders:
6784....27467
Proposed Rules:
5470....27477

47 CFR
64 (2 documents)....27467, 27468
Proposed Rules:
1....27478

50 CFR
Proposed Rules:
683....27479
685....27481

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

Presidential Documents

Title 3—

The President

Proclamation 6152 of June 29, 1990

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year.

3. Pursuant to section 504(c)(5) of the 1974 Act, I have determined that Brazil should be redesignated as a beneficiary developing country with respect to specified previously designated eligible articles. Brazil has been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the 1974 Act.

4. Section 503(c)(1) of the 1974 Act (19 U.S.C. 2463(c)(1)) provides that the President may not designate certain specified categories of import-sensitive articles as eligible articles under the GSP. Section 503(c)(1)(A) of the 1974 Act provides that textile and apparel articles that are subject to textile agreements are import-sensitive. Pursuant to sections 504(a) and 604 of the 1974 Act (19 U.S.C. 2464(a) and 2483), I am acting to modify the HTS to remove from eligibility under the GSP those articles that have become subject to textile agreements and to make certain conforming changes in the HTS.

5. Pursuant to section 504(f) of the 1974 Act (19 U.S.C. 2464(f)), in Proclamation No. 5805 of April 29, 1988 (53 FR 15785), the President terminated the preferential tariff treatment under the GSP for articles eligible for such treatment that are imported from Bahrain. In light of revised statistics provided by the World Bank on the per capita gross national product of Bahrain for calendar year 1985, I have determined that the previous determination in Proclamation No. 5805 that the per capita gross national product of Bahrain for calendar year 1985 exceeded the applicable limit under section 504(f) of the 1974 Act was erroneous, and the restrictions of section 504(f)(1) of the 1974 Act are therefore inapplicable to Bahrain. I have further determined, pursuant to sections 502(a) and (c) of the 1974 Act (19 U.S.C. 2462(a) and (c)), and having due regard for the eligibility criteria set forth therein, that it is appropriate to designate Bahrain as a beneficiary developing country for purposes of the GSP. Pursuant to section 502(a)(1) of the 1974 Act (19 U.S.C. 2462(a)(1)), I have notified the House of Representatives and the Senate of this designation.

6. Pursuant to section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the Implementation Act) (Public Law 100–449, 102 Stat. 1851, 1855), the President in Proclamation No. 6142 of May 25, 1990 (55 FR 21835), implemented an accelerated schedule of duty elimination under the United States-Canada Free-Trade Agreement. I have determined that it is necessary to modify the HTS to correct a typographical error in Proclamation No. 6142.

7. Section 1204(b)(1)(C) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3004(b)(1)(C)) authorizes the President to proclaim such modifications to the HTS as are necessary or appropriate to implement such technical rectifications to the HTS as the President considers necessary. Pursuant to section 1204(b)(1)(C) of the 1988 Act, I have determined that certain technical rectifications to the HTS are necessary.

8. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to Title V and section 604 of the 1974 Act, section 201(b) of the Implementation Act, and section 1204(b)(1)(C) of the 1988 Act, do proclaim that:

(1) In order to remove from eligibility under the GSP an article that has become subject to textile agreements, and to make certain conforming changes in the HTS, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to terminate preferential tariff treatment under the GSP for an article imported from all designated beneficiary developing countries that has become subject to textile agreements, the Rates of Duty 1-Special subcolumn for the HTS subheading enumerated in Annex II(a) is modified by deleting the symbol "A," in the parentheses.

(b) In order to provide preferential tariff treatment under the GSP to Brazil, which has been excluded from the benefits of the GSP for certain eligible articles imported from Brazil, and following my determination that a country not previously receiving such benefits should again be treated as a beneficiary developing country with respect to such articles, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(b) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(3) In order to provide that Bahrain is treated as a designated beneficiary developing country and to provide that Brazil, which has not been treated as a beneficiary developing country with respect to specified eligible articles, should be redesignated as a beneficiary developing country with respect to such articles for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this proclamation.

(4) Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after May 1, 1990, for HTS subheading 1102.90.60, in the Rates of Duty 1-Special subcolumn, strike the symbol "(CA)" and the duty rate preceding it, and in lieu thereof insert in the parentheses following the "Free" rate of duty the symbol "CA," in alphabetical order.

(5) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS that is followed by the symbol "CA" in parentheses set forth in the Rates of Duty 1-Special subcolumn for each of the HTS subheadings enumer-

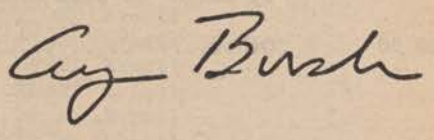
ated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof.

(6) In order to make technical rectifications in particular provisions, the HTS is modified as set forth in Annex V to this proclamation.

(7) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(8) Except as provided for in paragraphs (4), (5), and (6) of this proclamation, the amendments made by this proclamation, shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1990.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



Annex I

Notes:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990:

Heading 5006.00.00 is superseded by: "Silk yarn and yarn spun from silk waste, put up for retail sale; silkworm gut:				
5006.00.10	Containing 85 percent or more by weight of silk or silk waste....	5%	Free (A,E*,IL) 4% (CA)	40%
5006.00.90	Other.....	5%	Free (E*,IL) 4% (CA)	40%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990:

(a) For HTS subheading 5308.90.00, in the Rates of Duty 1-Special subcolumn, delete the symbol "A," in parentheses.

(b) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof:

2905.19.00	7608.20.00	8429.52.50	8479.81.00	8708.39.50
2909.19.10	7609.00.00	8429.59.50	8479.82.00	8708.40.10
2915.70.00	8407.32.20	8430.10.00	8479.89.70	8708.40.20
2916.15.50	8407.33.20	8430.20.00	8479.89.90	8708.40.50
2916.19.50	8408.10.00	8430.31.00	8479.90.40	8708.50.50
2917.13.00	8408.20.90	8430.39.00	8479.90.80	8708.50.80
2917.14.10	8408.90.90	8430.41.00	8483.10.10	8708.60.50
2917.19.50	8409.91.92	8430.49.80	8483.10.30	8708.60.80
2917.35.00	8409.91.99	8430.50.50	8512.40.40	8708.70.80
2918.11.10	8409.99.91	8430.61.00	8512.90.90	8708.80.50
3703.10.30	8409.99.92	8430.62.00	8519.91.00	8708.91.50
3703.20.30	8411.91.90	8430.69.00	8519.99.00	8708.93.50
3703.90.30	8411.99.90	8431.41.00	8527.31.40	8716.90.50
4011.40.00	8421.23.00	8431.42.00	8547.90.00	9303.30.40
4011.91.50	8421.31.00	8431.43.80	8708.10.00	9508.00.00
4011.99.50	8429.19.00	8465.94.00	8708.21.00	
4012.10.50	8429.40.00	8479.10.00	8708.29.00	
7608.10.00	8429.51.50	8479.30.00	8708.31.50	

Annex III

Modifications to General Note 3(c)(ii) of the HTS

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990:

(a) General note 3(c)(ii)(A) is modified by adding "Bahrain" to the enumeration of independent countries.

(b) General note 3(c)(ii)(D) is modified--

(1) by deleting the following HTS provisions and the countries set opposite these provisions:

2905.19.00	Brazil	8411.91.90	Brazil	8479.90.40	Brazil
2909.19.10	Brazil	8411.99.90	Brazil	8479.90.80	Brazil
2915.70.00	Brazil	8421.23.00	Brazil	8483.10.10	Brazil
2916.15.50	Brazil	8421.31.00	Brazil	8483.10.30	Brazil
2916.19.50	Brazil	8429.19.00	Brazil	8512.40.40	Brazil
2917.13.00	Brazil	8429.40.00	Brazil	8512.90.90	Brazil
2917.14.10	Brazil	8429.51.50	Brazil	8519.91.00	Brazil
2917.19.50	Brazil	8429.52.50	Brazil	8519.99.00	Brazil
2917.35.00	Brazil	8429.59.50	Brazil	8527.31.40	Brazil
2918.11.10	Brazil	8430.10.00	Brazil	8547.90.00	Brazil
3703.10.30	Brazil	8430.20.00	Brazil	8708.10.00	Brazil
3703.20.30	Brazil	8430.31.00	Brazil	8708.21.00	Brazil
3703.90.30	Brazil	8430.39.00	Brazil	8708.29.00	Brazil
4011.40.00	Brazil	8430.41.00	Brazil	8708.31.50	Brazil
4011.91.50	Brazil	8430.49.80	Brazil	8708.39.50	Brazil
4011.99.50	Brazil	8430.50.50	Brazil	8708.40.10	Brazil
4012.10.50	Brazil	8430.61.00	Brazil	8708.40.20	Brazil
7608.10.00	Brazil	8430.62.00	Brazil	8708.40.50	Brazil
7608.20.00	Brazil	8430.69.00	Brazil	8708.50.50	Brazil
7609.00.00	Brazil	8431.41.00	Brazil	8708.50.80	Brazil
8407.32.20	Brazil	8431.42.00	Brazil	8708.60.50	Brazil
8407.33.20	Brazil	8431.43.80	Brazil	8708.60.80	Brazil
8408.10.00	Brazil	8465.94.00	Brazil	8708.70.80	Brazil
8408.20.90	Brazil	8479.10.00	Brazil	8708.80.50	Brazil
8408.90.90	Brazil	8479.30.00	Brazil	8708.91.50	Brazil
8409.91.92	Brazil	8479.81.00	Brazil	8708.93.50	Brazil
8409.91.99	Brazil	8479.82.00	Brazil	8716.90.50	Brazil
8409.99.91	Brazil	8479.89.70	Brazil	9303.30.40	Brazil
8409.99.92	Brazil	8479.89.90	Brazil	9508.00.00	Brazil

(2) by deleting the following countries opposite the following HTS provisions:

8407.34.20	Brazil
8527.11.11	Brazil
8708.99.50	Brazil

Annex IV

Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For the HTS subheadings 5006.00.10 and 5006.00.90 created by Annex I of this proclamation, on or after January 1 of each of the following years, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates of duty inserted in lieu thereof:

HTS Subheading	1991	1992	1993	1994	1995	1996	1997	1998
5006.00.10	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free
5006.00.90	3.5%	3%	2.5%	2%	1.5%	1%	0.5%	Free

Annex V

Technical Rectifications to the HTS

In order to make certain technical corrections, the HTS is modified as follows:

(a) effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989:

(1) HTS heading 9902.29.36 is modified by inserting "2922.29.25 or" after "subheading" in the article description.

(2) HTS heading 9902.29.37 is modified by inserting "2922.29.25 or" after "subheading" in the article description.

(3) HTS heading 9902.29.39 is modified by inserting "2922.29.25 or" after "subheading" in the article description.

(4) HTS heading 9902.29.74 is modified by striking out "2933.90.37" from the article description and by inserting "2933.39.47" in lieu thereof.

(5) HTS heading 9902.29.86 is modified by striking out "2935.00.45" from the article description and by inserting "2935.00.50" in lieu thereof.

(6) HTS heading 9902.30.02 is modified by striking out "note 8" from the effective period column and by inserting "note 9" in lieu thereof.

(b) effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after December 8, 1989, U.S. note 5 to subchapter III of chapter 99 is modified by inserting "subheading 9903.23.14," after "9903.23.10,".

(c) effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 1, 1990:

(1) U.S. note 8 to subchapter II of chapter 99 is modified by striking out references to headings "9902.29.09", "9902.29.89", "9902.29.90", "9902.29.98", "9902.30.03", and "9902.30.06".

(2) HTS heading 9902.29.12 is deleted.

(3) HTS heading 9902.29.50 is modified by striking out "2941.90.50," from the article description.

(d) effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after May 16, 1990, U.S. note 5 to subchapter III of chapter 99 is modified by inserting "subheading 9903.23.18," after "9903.23.14,".

(e) effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990, HTS heading 9902.29.86 is modified by striking out "2935.00.46" from the article description and by inserting "2935.00.50" in lieu thereof.

Billing code 3195-01-M

[FR Doc. 90-15513

Filed 6-29-90; 12:26 pm]

Billing code 3195-01-C

Presidential Documents

Proclamation 6153 of June 29, 1990

National Literacy Day, 1990

By the President of the United States of America

A Proclamation

Our future depends on education, and education begins with literacy. Millions of Americans are not sufficiently literate to function fully in our society from day to day. These individuals can be found not only in prisons and juvenile court, and on welfare and unemployment lines, but also on the job and at the heads of families—trying their best but lacking the skills they need to realize their greatest dreams for themselves and for their children.

Many American students are at risk because their families cannot support their efforts to learn. At risk, too, are the United States' strength and productivity. Because literacy is essential for workers to gain the knowledge and skills their jobs require, it is essential to keeping American business and industry competitive.

If the United States is to remain a free, strong, and prosperous country, and a force for good in the world, we must cultivate the talent and potential of all our people—in the work place, in our families, and in our communities. Indeed, that is why we have included improved literacy among our national education goals. My Administration and the Nation's Governors are working hard to ensure that, by the year 2000, every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy.

Joining their Federal, State, and local governments in efforts to promote literacy are thousands of professional educators, volunteers, business and community leaders, religious organizations, and labor associations. By providing tutoring, job training, and other educational opportunities, these concerned men and women are helping undereducated Americans to discover the unlimited rewards of literacy and learning. It is fitting that we set aside a day to salute them—and their students—for their dedication and hard work. In so doing, let us also note that each of us has a stake in building a more literate America.

To focus attention on the importance of literacy, the Congress, by Senate Joint Resolution 320, has designated July 2, 1990, as "National Literacy Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 2, 1990, as National Literacy Day. I call upon the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-15689
Filed 7-2-90; 11:14 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6154 of June 29, 1990

National Ducks and Wetlands Day, 1990

By the President of the United States of America

A Proclamation

On Sunday, July 1, this year's winner of the Federal Duck Stamp Contest will be honored at a special event unveiling the 1990 Duck Stamp. The stamp, issued by the United States Fish and Wildlife Service, will go on sale at post offices nationwide on July 2.

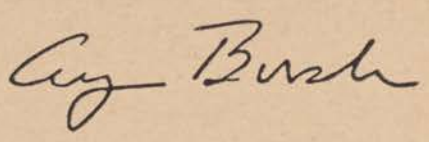
The Federal Duck Stamp Program is unique in that it represents the only art competition sponsored by the Federal Government. Every year, hundreds of talented artists across the country compete to have their work featured on the Duck Stamp. More important, however, is the Program's role in supporting wetlands conservation.

During the 55 years since the Federal Duck Stamp Program was established, more than $350 million in Duck Stamp receipts have been applied to waterfowl habitat conservation programs. These receipts have enabled us to preserve more than four million acres of wetland refuges for North American waterfowl. Thus, the Federal Duck Stamp Program represents an effective partnership between the public and private sectors, bringing together government officials, artists, sportsmen, business and industry leaders, and other concerned Americans in a concerted effort to restore and protect the wetlands that sustain our waterfowl population and other wildlife.

In recognition of the contributions of the Federal Duck Stamp Program, the Congress, by House Joint Resolution 599, has designated July 1, 1990, as "National Ducks and Wetlands Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 1, 1990, as National Ducks and Wetlands Day. I encourage the people of the United States to observe this day with appropriate ceremonies and activities and to support the Duck Stamp Program and other conservation efforts.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-15690
Filed 7-2-90; 11:15 am]
Billing code 3195-01-M

Executive Order 12718 of June 29, 1990

President's Advisory Commission on the Public Service

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to provide a continuing source of advice on the public service from outstanding leaders in various walks of private life, it is hereby ordered as follows:

Section 1. *Establishment.* The President's Advisory Commission on the Public Service ("Commission") is hereby established. The Commission shall be comprised of 13 members to be appointed by the President from among leading citizens in private life. The members shall be appointed for 2-year terms, except that initial appointments shall include six members appointed to serve 1-year terms. Any vacancy in the Commission shall be filled by an appointment for the remainder of the term for which the original appointment was made, and a member whose term has expired may serve until his or her successor has been appointed. The President shall designate one of the members of the Commission to serve as Chairperson.

Sec. 2. *Functions.* (a) The Commission shall meet from time to time at the request of the Chairperson and shall consider ways to enhance the public service in American life, including:

(1) improving the efficiency and attractiveness of the Federal civil service;

(2) increasing the interest among American students in pursuing careers in the public service; and

(3) strengthening the image of the public service in American life.

(b) The Commission shall submit a report on its activities to the Director of the Office of Personnel Management and the President each year.

Sec. 3. *Administrative Provisions.* (a) The members of the Commission shall serve without compensation, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(b) All executive agencies are directed, to the extent permitted by law, to provide such information, advice, and assistance to the Commission as the Commission may request.

(c) The Director of the Office of Personnel Management shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with administrative services, staff support, and necessary expenses.

Sec. 4. *General.* Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Office of Personnel Management in accordance with the guidelines and procedures established by the Administrator of General Services.

George Bush

THE WHITE HOUSE,
June 29, 1990.

[FR Doc. 90-15522
Filed 6-29-90; 12:12 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of June 6, 1990

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 15(g) of the Small Business Act, as amended, and section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to establish the annual goals required by Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100–656).

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 6, 1990.

[FR Doc. 90–15640
Filed 6–29–90; 4:46 pm]
Billing code 3110–01–M

Rules and Regulations

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-13, Amdt. 39-6640]

Airworthiness Directives; Aerospace Lighting Corporation P/N 31.85.1.A Lamp Connectors and Series 66 Fluorescent Lamps

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that would provide for the inspection and adjustment/replacement, if necessary, of Aerospace Lighting Corporation Part Number (P/N) 31.85.1.A lamp connectors, and Series 66, fluorescent lamps used in cabin fluorescent lighting systems. This AD is needed to prevent smoke, fire, electrical shock, or electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft.

DATES: Effective—July 16, 1990.

Comments must be received by August 31, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 16, 1990.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-13, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Aerospace Lighting Corporation, 101-8 Colin Drive, Holbrook, New York 11741, or examined at the Federal Aviation Administration, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Systems and Equipment Branch, ANE-173, Federal Aviation Administration, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue (Room 202), Valley Stream, New York 11581, telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: The FAA has determined that if Aerospace Lighting Corporation Part Number (P/N) 31.85.1.A lamp connectors and Series 66 fluorescent lamps used in cabin lighting systems are not properly installed, are damaged, or are improperly configured, high voltage arcing may develop. This could result in excessive heat build up which may cause smoke, fire, electrical shock, or electromagnetic interference on numerous aircraft types that have cabin fluorescent lighting systems installed. There have been a number of instances where smoke and/or fire has developed. Aerospace Lighting Corporation has issued Information Bulletin (IB) No. 90-001 dated March 30, 1990, which addresses this problem. The FAA has reviewed and approved Aerospace Lighting Corporation IB 90-001, dated March 30, 1990, which describes the inspection and replacement procedures for the fluorescent lighting system.

Since this situation is likely to exist or develop on other aircraft that have these fluorescent lighting systems installed, this AD requires the inspection and adjustment/replacement, if necessary, of improperly installed, damaged, or improperly configured Aerospace Lighting Corporation P/N 31.85.1.A lamp connectors and Series 66 fluorescent lamps used in cabin fluorescent lighting systems, in accordance with the IB previously described. These systems are installed on, but not limited to, Sikorsky S-76A, Israel Aircraft Industries 1124, British Aerospace Jetstream Model 3101, Gulfstream GIV, SAAB-Scania 340A, British Aerospace HS.125-600A/-700A, and the Mystere Falcon 10/50 aircraft.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written, data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-13, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It had been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospace Lighting Corporation: Applies to Aerospace Lighting Corp. Part Number (P/N) 31.85.1.A lamp connectors and Series 66 fluorescent lamps used in cabin fluorescent lighting systems as installed on, but not limited to, Sikorsky S–76A, Israel Aircraft Industries 1124, British Aerospace Jetstream Model 3101, Gulfstream GIV, SAAB–Scania 340A, British Aerospace HS.125–600A/700A, and the Mystere Falcon 10/50 aircraft. Compliance is required as indicated, unless previously accomplished.

To prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, accomplish the following:

(1) Inspect the cabin fluorescent lighting system in accordance with Aerospace Lighting Corporation Information Bulletin No. IB 90–001, paragraph IV. "Fluorescent Lighting System Components Identification and Inspection Procedure," subparagraphs B.1., 2., 3., 5., 6., and 7.

(2) After completing the inspection above in paragraph (a)(1), any part(s) found to be damaged or improperly configured, perform the removal/replacement procedures in accordance with paragraph IV. B.4., 8., and 9. as required.

(b) Within 5 flights or 10 flight hours, whichever occurs first, of a cabin fluorescent lighting system components failure, repeat the removal/replacement procedures of (a)(2).

(c) An alternate method of compliance with (a)(1), (a)(2) and (b), would be to turn the fluorescent lighting system off and to placard the system to prevent unintentional activation.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, New York Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue (Room 202), Valley Stream, New York 11581.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, New York 11741. This information may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the New York Aircraft Certification Office, 181 South Franklin Avenue (Room 202), Valley Stream, NY 11581.

The inspection, and adjustment/replacement, if necessary, of Aerospace Lighting Corporation P/N 31.85.1.A lamp connectors and Series 66 fluorescent lamps used in cabin fluorescent lighting systems shall be done in accordance with Aerospace Lighting Corporation Information Bulletin No. IB 90–001, dated March 30, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, NY 11741. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the New York Aircraft Certification Office, 181 South Franklin Avenue (Room 202), Valley Stream, NY 11581, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

This amendment becomes effective July 16, 1990.

Issued in Burlington, Massachusetts, on June 14, 1990.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 90–15374 Filed 7–2–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–ANE–11; Amdt. 39–6645]

Airworthiness Directives; Teledyne Continental Motors (TCM) Engines, Models TSIO–520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) Model TSIO–520 series engines, which currently requires a one-time inspection and, if necessary, replacement of the scavenge oil pump gears. This amendment requires the same one-time inspection and, if necessary, replacement of the scavenge oil pump gears but exempts certain engines by accessory part number or engine serial number or installed equipment.

This amendment is prompted by a TCM service bulletin which details the exemptions noted above.

This condition, if not corrected, could result in possible failure of the scavenge pump which could result in total loss of engine power.

EFFECTIVE DATE: August 10, 1990.

ADDRESSES: The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the Federal Aviation Administration, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: On November 20, 1989, the FAA issued AD 89–24–01, Amendment 39–6358 (54 FR 46726, November 7, 1989), to require a one-time inspection and, if necessary, replacement of the scavenge oil pump gears on certain TCM model TSIO–520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB engines. That action was prompted by service difficulty reports (39 since 1983) of scavenge pump gear failures on these engine models. The gears, part numbers (P/N's) 635334 and 639388, have a shallow hardness depth. Wear or pressure abrasive cleaning

procedures can destroy the hardened layer. This condition, if not corrected, could result in failure of the scavenge pump gears with resultant loss of engine power due to lack of lubrication.

Since issuance of AD 89-24-01, TCM issued Service Bulletin (SB) M90-6 which provides for the same one-time inspection and replacement, if necessary, of the scavenge pump gears. However, the inspection called for by SB M90-6 does not apply to those TSIO-520 series engines with starter adapters P/N's 642085A4 or 642085A5 installed, or to certain serial number engines, or to any engine equipped with a starter adapter with a pulley for an air conditioner compressor drive. When TCM introduced the replacement (carburized) gears, P/N's 649157 and 649159, they did not mark the early production gears by drill point as is currently done. These early production gears were marked by ink stamp which quickly disappeared; therefore, there are unidentifiable carburized gears in use. The SB also lists Rockwell hardness test values so that unmarked P/N's 649157 and 649159 gears may be identified.

The FAA has reviewed and approved TCM SB M90-6, dated February 26, 1990, which describes procedures for a one-time inspection and replacement, if necessary, of the scavenge pump gears as described above.

Since this condition is likely to exist or develop on other engines of this same type design, this AD revises AD 89-24-01 to correct the applicability such that it is not applicable to require a one-time inspection and replacement, if necessary, of the scavenge pump gears, in accordance with SB M90-6.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 8,481 engines and will cost approximately $310 per engine for a total cost of $2,629,100. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6358 (54 FR 46726, November 7, 1989), AD 89-24-01, as follows:

Teledyne Continental Motors (TCM): Applies to TCM engines, Models TSIO-520B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, and VB, equipped with scavenge oil pump gears, part numbers (P/N's) 635334, 639388, 649157, and 649159 except those engines equipped with starter adapter P/N's 642085A4 or 642085A5, those engines with serial numbers as shown in the Appendix of this AD, or those engines equipped with any starter adapter with a pulley for an air conditioner compressor drive, certificated in any category.

Compliance is required within 500 flight hours after the effective date of this AD, or at the next maintenance event, after the effective date of this AD, during which the scavenge oil pump gears are removed from the engine, whichever occurs first, unless already accomplished.

To prevent possible failure of scavenge oil pump gears which could result in total loss of engine power, accomplish the following:

(a) Remove the scavenge oil pump gears from the scavenge oil pump housing and inspect the gear teeth for a drill point as shown in Figure 1 of the Appendix to this AD.

(1) If the drill point is present, inspect the gears in accordance with the procedures outlined in the Appendix to this AD.

(2) If the drill point is not present, a Rockwell hardness test may be conducted on the gear. If a Rockwell "A" value of 79 or greater or a Rockwell "C" value of 56 or greater is obtained, inspect the gear in accordance with the procedures outlined in the Appendix to this AD.

(3) If the gears fail the inspection specified in (1) or (2) above, replace the gears with serviceable P/N 649157 or P/N 649159 gears having the drill point marking.

Note: TCM SB M90-6 contains information relating to the requirements of this AD.

(b) Make an appropriate log book entry showing compliance with this AD.

(c) Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

All persons affected by this AD who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the FAA, Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803.

This amendment revises Amendment 39-6358, AD 89-24-01. This amendment becomes effective August 10, 1990.

Issued in Burlington, Massachusetts, on June 20, 1990.

Herschel C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix I

This appendix calls for the replacement of scavenge pump gears 635334 and 639388 which were installed in scavenge pumps at TCM prior to April of 1985. At that time these gears were superseded by p/n 649157 and 649159. These superseding gears are carburized in order to extend their service life. Scavenge pumps which contain the new gears and engines equipped with an air conditioner drive pulley on the starter adapter are excluded from the requirements of this service bulletin. Listed below are the part numbers and serial numbers of starter adapter/scavenge pump assemblies and engines which are excluded. All other affected models must have their scavenge pumps disassembled and the scavenge pump gears replaced with the 649157 and 649159 gears.

Components and engines which are excluded from the requirements of this service bulletin:

1. Starter adapters with ink stamped part numbers 642085A4 and 642085A5. (These contain the new gears 649157 and 649159 and do not need to be disassembled.)

2. The following serial numbered engines. (These engines contain the new gears and do not need to be disassembled.)

TSIO520B
NEW N/A
REB N/A

TSIO520BB
NEW 526027—and Subsequent
REB 236969—and Subsequent
TSIO520D–DB
NEW D N/A
REB D 180083—and Subsequent
NEW DB N/A
REB DB 242005—and Subsequent
TSIO520E–EB
NEW E N/A
REB E 275045–275134, 275141–275156—and Subsequent
NEW EB 510818—and Subsequent
REB EB 271058, 271061–171130, 271135–271137—and Subsequent
TSIO520J–JB
NEW J N/A
REB J 218937–218942, 218944—and Subsequent
NEW JB N/A
REB JB 237135—and Subsequent
TSIO520K–KB
NEW K N/A
REB K 224588—and Subsequent
NEW KB 531000
REB KB 245705—and Subsequent
TSIO520N–NB
NEW N N/A
REB N 228549—and Subsequent
NEW NB 521630—and Subsequent
REB NB 276619, 276626, 276629, 276630, 276634–273636, 276638–276770, 276772, 276773, 276777—and Subsequent
TSIO520U–UB
NEW U N/A
REB U N/A
NEW UB 527114—and Subsequent
REB UB 248887–248889, 248893, 248895, 248898–248926, 278202, 278203—and Subsequent
TSIO520VB
NEW VB 529072—and Subsequent
REB VB 266975, 266838, 266930, 266991, 278008–278144, 278147–278201, 278204–278241—and Subsequent

3. Starter adapters equipped with a pulley for an air conditioner compressor drive. (These contain a different set of scavenge pump gears which do not need replacement)

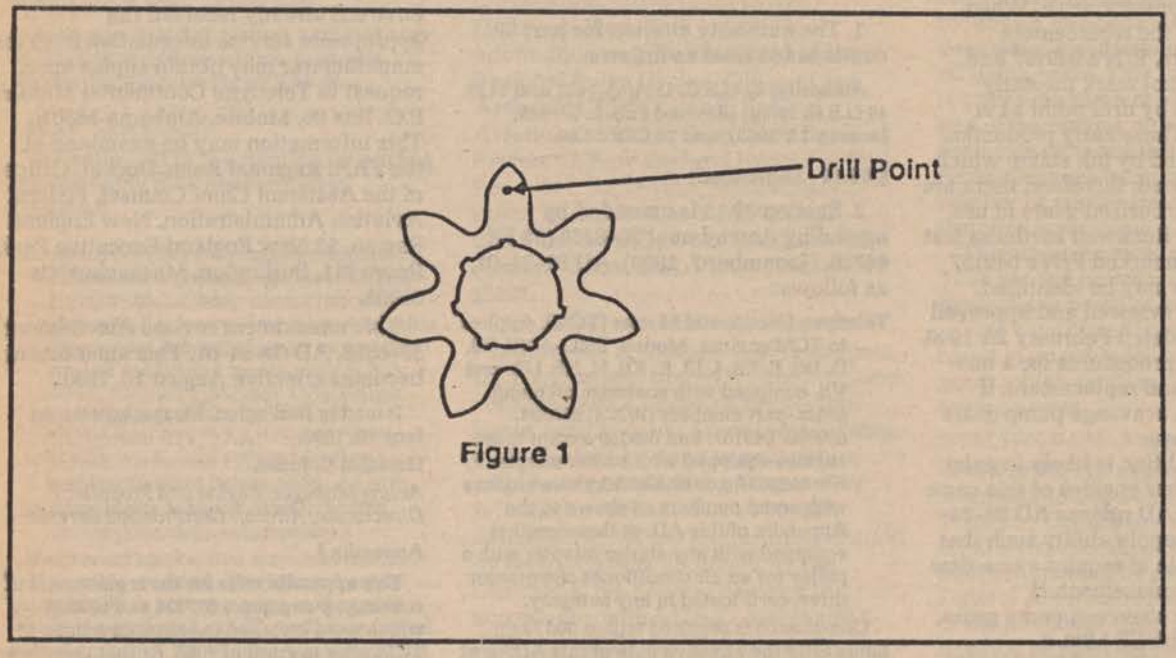


Figure 1

If an affected model engine does not fall into one of the above categories, then the scavenge pump must be removed and the scavenge pump gears replaced with p/n 649157 and 649159.

It may be that p/n 649157 and 649159 have been previously installed in the pump during an overhaul or other servicing. Gears removed from a pump may be inspected to determine if they are 649157 and 649159. Prior to inspection, the scavenge pump gears should be cleaned with an approved carbon cleaner and thoroughly rinsed with a mineral spirit solvent. 649157 and 649159 gears can be identified by a drill point on the end of one gear tooth as shown in figure.

1. Gears so identified may be reused in the scavenge pump after the visual and dimensional inspection outlined below. Some earlier 649157 and 649159 gears do not have the drill point marking but may be identified by means of a hardness test. The hardness test must be performed in a Rockwell tester with the test point in the same location as the drill point shown in figure 1. If the gears test above 56 Rc or 79 Ra, then the gears are 649157 and 649159. (Rockwell A scale testing is recommended in order to minimize the test indentation.)

Gears intended for reuse should be visually inspected for uneven wear, pitting or excessive galling. A light amount of polishing is normal and acceptable. If the gears pass this visual inspection then they should be inspected to the dimensions specified in the Table of Limits and Magnaflux procedures found in the TSIO 520 Permold Series Overhaul Manual X30574A. If the gears pass all of these tests they may be reused. All other affected model scavenge pump gears must be replaced with serviceable 649157 and 649159 gears.

CAUTION * * * Do not abrasive blast gears. This may remove surface hardness which can cause excessive wear in service.

[FR Doc. 90–15375 Filed 7–2–90; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 90–AGL–7]

Transition Area Establishment—Eaton Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Eaton Rapids, MI, transition area to accommodate a new VOR–A instrument approach procedure to Skyway Estates Airport, Eaton Rapids, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other

aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7899.

SUPPLEMENTARY INFORMATION:

History

On Friday, May 11, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Eaton Rapids, MI (55 FR 19742).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a transition area airspace near Eaton Rapids, MI. This transition area is being established to accommodate a new VOR–A instrument approach procedure to Skyway Estates Airport, Eaton Rapids, MI.

The development of this procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Eaton Rapids, MI [New]

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Skyway Estates Airport (lat. 42°35'01" N., long. 84°39'05" W.) and within 1.5 miles each side of the Lansing, MI, VORTAC (lat. 42°43'03" N., long. 84°41'52" W.) 166 radial extending from the 5.5-mile radius area to 8.5 miles north northwest of Skyway Estates Airport; excluding the portions within the Charlotte, MI, and Lansing, MI, transition areas.

Issued in Des Plaines, Illinois on June 26, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90–15376 Filed 7–2–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Domestic Finance)

17 CFR Part 401

Implementing Regulations for the Government Securities Act of 1986

AGENCY: Office of the Assistant Secretary (Domestic Finance), Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form an amendment to the regulations issued on July 24, 1987 (52 FR 27910) under the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). The amendment is being adopted to provide exemptions from the broker-dealer registration or notice requirements, pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), for foreign government securities brokers and dealers engaged in certain activities involving U.S. investors and the government securities market. The final rule adopts the amendment as proposed for comment on March 5, 1990 (55 FR 7733).

EFFECTIVE DATE: August 2, 1990.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director), or Don Hammond (Assistant Director), Public Debt, Government Securities Regulations Staff, room 209, 999 E Street NW., Washington, DC 20239–0001, (202) 376–4632.

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

On March 5, 1990 (55 FR 7733), the Department proposed for comment an amendment to the GSA regulations, by adding § 401.9 to part 401 of title 17 of the Code of Federal Regulations. This amendment, which conforms substantially to the Securities and Exchange Commission (SEC) Rule 15a–6 (17 CFR 240.15a–6) which was effective August 15, 1989, provides exemptions from registration or notice requirements for foreign government securities brokers or dealers provided the entities comply with SEC Rule 15a–6, as modified in § 401.9. SEC Rule 15a–6 does not apply to foreign government securities brokers and dealers or the government securities broker-dealer activities of financial institutions because the exclusive authority to exempt these entities from the registration and notice requirements of section 15C of the Exchange Act has been vested with the Treasury. Accordingly, § 401.9 was promulgated to provide exemptions for similarly situated foreign government securities brokers or dealers. The 60-day comment period closed on May 4, 1990.

The Department received only one comment letter, from the Public Securities Association (PSA), in response to the proposed amendment. The PSA supports the adoption of § 401.9 because it substantially conforms with SEC Rule 15a–6 and it establishes a consistent position and equivalent treatment for foreign government securities brokers and dealers. Thus, to accomplish these objectives and to facilitate increased access to foreign markets by U.S.

institutional investors, the Department is adopting § 401.9 as proposed. The only changes that have been made to the final rule are minor technical and grammatical corrections.

This rule, as incorporated in § 401.9, exempts from registration or notice foreign government securities brokers and dealers engaged in government securities activities with certain non-U.S. persons, or with specified U.S. institutional investors under limited conditions. The exempted activities include the following: (1) Effecting transactions in government securities with or for U.S. persons that have not been solicited by the foreign government securities broker or dealer (i.e., non-direct contacts with U.S. investors); (2) furnishing research reports to certain U.S. institutional investors and effecting transactions in securities discussed in the reports, under certain limiting conditions; (3) establishing direct contacts with U.S. institutional investors for the purpose of inducing or attempting to induce the purchase or sale of government securities, provided (i) all resulting transactions are effected through an intermediary U.S. government securities broker or dealer or noticed financial institution and (ii) certain conditions are met by the foreign government securities broker or dealer, foreign associated persons and the intermediary broker or dealer or noticed financial institution; and (4) establishing direct contacts for the purpose of effecting transactions in government securities, without a U.S. intermediary, with or for registered government securities brokers or dealers, registered brokers or dealers, noticed financial institutions, certain non-noticed financial institutions, foreign branches and agencies of U.S. persons, certain international organizations, U.S. citizens resident abroad and foreign persons temporarily present in the United States.

The determinations made by the Department in the preamble to the proposed rule (55 FR 7733, 7734–37) that articulated the factors and considerations that led to development of § 401.9 are still relevant and valid, but for the sake of brevity they will not be repeated herein.

There is one area of potential confusion or conflict between SEC Rule 15a–6 and the Department's rule in § 401.9 pertaining to the use of U.S. broker-dealer intermediaries by an exempt foreign broker or dealer. SEC Rule 15a–6 does not permit a bank or other financial institution acting in a broker or dealer capacity to act as an intermediary (i.e., assume responsibility for a trade) between an exempt foreign broker or dealer and a U.S. institutional investor. However, in recognition of the regulatory structure created by the GSA that incorporates financial institution brokers or dealers, § 401.9 modifies SEC Rule 15a–6 so that financial institutions that have filed notice as government securities brokers or dealers can serve as intermediaries for exempt foreign brokers and dealers for their transactions in government securities.

It is the Department's understanding, based on discussions with staff of the SEC, that the staff is willing to interpret Rule 15a–6 in such a manner that would permit an exempt foreign broker or dealer, for its transactions in government securities, to use as an intermediary a financial institution that has filed notice as a government securities broker or dealer without violating SEC Rule 15a–6, provided the foreign broker or dealer complies with the provisions of Rule 15a–6 for its registered securities transactions. We believe that such an interpretation will clarify the interrelationships between the two rules and will provide uniformity and consistency while minimizing confusion.

II. Special Analysis

In the preamble to the proposed regulation, the Department concluded that this amendment did not constitute a major rule for the purposes of Executive Order 12291. The Department also certified that the regulation would not have a significant economic impact on a substantial number of small entities. Accordingly, the Department concluded that a regulatory flexibility analysis was not required. Since the one commenter did not address these issues, the Department believes that there is no reason to alter either its conclusion that the regulation does not constitute a major rule under Executive Order 12291 or its certification that the regulation will not have a significant economic impact on a substantial number of small entities.

The collections of information contained in paragraphs 401.9(g) and 401.9(h) of this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1535–0090. The estimated average annual burden associated with the collection of information in paragraphs 401.9(g) and 401.9(h) is three hours per recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Bureau of the Public Debt, Government Securities Regulations Staff, room 209, 999 E Street, NW., Washington, DC 20239–0001, and to the Office of Management and Budget, Paperwork Reduction Project (1535–0090), Washington, DC 20503.

List of Subjects In 17 CFR Part 401

Banks, banking, Brokers, Government securities. For the reasons set out in the Preamble, it is proposed to amend 17 CFR part 401 as follows:

PART 401—EXEMPTIONS

1. The authority citation for part 401 continues to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(a)(4)).

2. Section 401.9 is added to part 401 to read as follows:

§ 401.9 Exemption for certain foreign government securities brokers or dealers.

A government securities broker or dealer (excluding a branch or agency of a foreign bank) that is a non-U.S. resident shall be exempt from the provisions of sections 15C(a), (b), and (d) of the Act (15 U.S.C. 78o–5(a), (b) and (d)) and the regulations of this subchapter provided it complies with the provisions of 17 CFR 240.15a–6 (SEC Rule 15a–6) as modified in this section.

(a) For purposes of this section, "non-U.S. resident" means any person (including any U.S. person) engaged in business as a government securities broker or dealer entirely outside the U.S. that is not an office or branch of, or a natural person associated with, a registered broker or dealer, a registered government securities broker or dealer or a financial institution that has provided notice pursuant to § 400.1(d) of this chapter.

(b) Within § 240.15a–6 of this title, references to "security" and "securities" shall mean "government securities" as defined in § 400.3(m) of this chapter.

(c) Section 240.15a–6(a) of this title is modified to read as follows:

"(a) A foreign broker or dealer shall be exempt from the registration or notice requirements of section 15C(a)(1) of the Act to the extent that the foreign broker or dealer:"

(d) Paragraph 240.15a–6(a)(2)(iii) of this title is modified to read as follows:

"(iii) If the foreign broker or dealer has established a relationship with a registered broker or dealer for the purpose of compliance with paragraph (a)(3) of this rule, this relationship is disclosed in all research reports and all transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer,

pursuant to the provisions of paragraph (a)(3); and"

(e) Paragraph 240.15a–6(a)(3)(i)(B) of this title is modified to read as follows:

"(B) Provides its appropriate regulatory agency (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information, documents, or records within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the appropriate regulatory agency requests and that relates to transactions under paragraph (a)(3) of this rule, except that if, after the foreign broker or dealer has exercised its best efforts to provide this information, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide this information to its appropriate regulatory agency, the foreign broker or dealer is prohibited from providing this information by applicable foreign law or regulations, then this paragraph (a)(3)(i)(B) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this rule;"

(f) Paragraphs 240.15a–6(a)(3)(iii)(A) (*4*), (*5*) and (*6*) of this title are modified to read as follows:

"(*4*) Maintaining required books and records relating to the transactions, including those required by § 404.1 of this title for registered brokers and dealers (excluding registered government securities brokers and dealers and noticed financial institutions), §§ 404.2 and 404.3 of this title for registered government securities brokers or dealers, and § 404.4 of this title for noticed financial institutions;

"(*5*) Complying with part 402 of this title with respect to the transactions; and

"(*6*) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with § 403.1 of this title for registered brokers and dealers (excluding registered government securities brokers and dealers and noticed financial institutions); §§ 403.2, 403.3, 403.4 and 403.6 of this title for registered government securities brokers and dealers, and § 403.5 of this title for noticed financial institutions."

(g) Paragraph 240.15a–6(a)(3)(iii)(C) of this title is modified to read as follows:

"(C) Has obtained from the foreign broker or dealer, with respect to each foreign associated person, the types of information specified in Rule 17a–3(a)(12) under the Act (17 CFR 240.17a–3(a)(12)), provided that the information required by paragraph (a)(12)(d) of that Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including, without limitation, those described in paragraph (a)(3)(ii)(B) of this rule. Notwithstanding the above, a registered broker or dealer that is a noticed financial institution shall comply with the provisions of paragraphs 404.4(a)(3)(i) (B) and (C) of this title, in lieu of Rule 17a–3(a)(12), provided that the information required by paragraphs 404.4(a)(3)(i) (B) and (C) of this title shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including, without limitation, those described in (a)(3)(ii)(B) of this rule;"

(h) Paragraph 240.15a–6(a)(3)(iii)(D) of this title is modified to read as follows:

"(D) Has obtained from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before its appropriate regulatory agency or a self-regulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD or other appropriate procedure as specified by the appropriate regulatory agency; and"

(i) Paragraph 240.15a–6(a)(3)(iii)(E) of this title is modified to read as follows:

"(E) Maintains a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D) of this rule, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this rule, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a–7(a) under the Act (17 CFR 240.17a–7(a)), provided that in Rule 17a–7(a) references to broker or dealer shall include government securities brokers or dealers, as those terms are defined in §§ 400.3 (k) and (l) of this title), and makes these records available to the appropriate regulatory agency upon request; or"

(j) Paragraph 240.15a–6(a)(4)(i) of this title is modified to read as follows:

"(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a financial institution acting pursuant to §§ 401.3(a)(2)(ii) or 401.4(a)(1) of this title;"

(k) Paragraph 240.15a–6(b)(2) of this title is modified to read as follows:

"(2) The term "foreign associated person" shall mean any natural person domiciled outside the United States who is an associated person (a person associated with a government securities broker or a government securities dealer as defined in section 3(a)(45) of the Act) of the foreign broker or dealer and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of this rule."

(l) Paragraph 240.15a–6(b)(3) of this title is modified to read as follows:

"(3) The term "foreign broker or dealer" shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of "government securities broker" or "government securities dealer" in sections 3(a)(43) and 3(a)(44) of the Act."

(m) Paragraph 240.15a–6(b)(5) of this title is modified to read as follows:

"(5) Only for the purposes of this rule, the term "registered broker or dealer" shall mean a person that is registered with the Commission under section 15C(a)(2) of the Act or a broker or dealer or a financial institution who has provided notice to its appropriate regulatory agency under section 15C(a)(1)(B)(ii) of the Act."

(n) For the purposes of this section, § 140.15a–6(b) of this title shall include a new paragraph (8) to read as follows:

"(8) The term "registered government securities broker or dealer" has the meaning set out in § 400.3(o) of this title."

(o) For the purposes of this section, 240.15a–6(b) of this title shall include a new paragraph (9) to read as follows:

"(9) The term "noticed financial institution" means a financial institution as defined at § 400.3(j) of this title that has provided notice to its appropriate regulatory agency pursuant to § 400.1(d) of this title."

(p) For the purposes of this section, § 240.15a–6(b) of this title shall include a new paragraph (10) to read as follows:

"(10) The term "appropriate regulatory agency" has the meaning set out in § 400.3(b) of this title."

(q) Section 240.15a–6(c) of this title is modified to read as follows:

"(c) The Secretary of the Treasury, upon receiving notification from an appropriate regulatory agency that the laws or regulations of a foreign country have prohibited a foreign broker or dealer, or a class of foreign brokers or dealers, engaging in activities exempted by paragraph (a)(3) of this rule, from providing, in response to a request from an appropriate regulatory agency, information, documents, or records within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this rule, may consider to be no longer applicable the exemption provided in paragraph (a)(3) of this rule with respect to the subsequent activities of the foreign broker or dealer or class of foreign brokers or dealers if the Secretary finds that continuation of the exemption is inconsistent with the public interest, the protection of investors and the purposes of the Government Securities Act."

(Approved by the Office of Management and Budget under Control Number 1535–0090)

Dated: June 25, 1990.

Michael E. Basham,

Acting Assistant Secretary for Domestic Finance.

[FR Doc. 90–15359 Filed 7–2–90; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Administrative Hearings; Time for Filing of Documents

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule amends DEA regulations relating to the conduct of administrative hearings to reflect a change in the operating hours of the Office of Administrative Law Judges. Filings and correspondence will be accepted only during normal office hours.

EFFECTIVE DATE: July 3, 1990.

FOR FURTHER INFORMATION CONTACT: Gayle Lowell, Hearing Clerk, Office of Administrative Law Judges, Drug Enforcement Administration, (202) 307–8188.

SUPPLEMENTARY INFORMATION: DEA's Office of Administrative Law Judges accepts filings and correspondence by mail, delivery service and in person only during its normal office hours. Those hours, formerly 9 a.m. to 5:30 p.m., have been changed to 8:30 a.m. to 5 p.m. This regulatory amendment reflects those adjusted hours.

The Acting Administrator certifies that this action will have no impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to section 1(a)(3) and 1(b) of E.O. 12291, this is not a major rule and relates only to internal operating procedures. Accordingly, it has not been reviewed by the Office of Management and Budget. This action has been analyzed in accordance with E.O. 12616 and it has been determined that this matter has no federalism implications which would warrant the preparation of a Federalism Assessment.

By virtue of the authority vested in the Attorney General by 21 U.S.C. 871(b), and redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR 0.100, the following amendment is made to § 1316.45 of title 21, of the Code of Federal Regulations.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure. Drug traffic control and research.

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart D—Administrative Hearings

1. The authority citation for part 1316 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 875, 958(d), 965.

§ 1316.45 [Amended]

2. Section 1316.45 is amended by removing from the second sentence the phrase "from 9 a.m. to 5:30 p.m." and inserting the phrase "from 8:30 a.m. to 5 p.m."

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90–15353 Filed 7–2–90; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14–89–01]

Anchorage Regulations; Apra Harbor, Guam, Mariana Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule:

a. Establishes a second Apra Harbor special anchorage area northeast of Naval Anchorage B and south of Drydock Point.

b. Redescribes the general anchorage at 33 CFR 110.238(a)(1) to exclude the existing special anchorage area presently found at 33 CFR 110.1129a.

c. Updates the description of all the general anchorages in 33 CFR 110.238(a) utilizing the World Geodetic System 1984 Datum (WGS 84) in lieu of the Guam 1963 Datum. In so doing the Latitude and Longitude measurements were altered due to the different measuring standards involved. This update revises 33 CFR 110 to be in line with the most recent changes.

EFFECTIVE DATE: August 2, 1990.

FOR FURTHER INFORMATION CONTACT: LT Kenneth Parris, Telephone (671) 477–3340 or FTS 550–7314.

SUPPLEMENTARY INFORMATION: On 26 December 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 52960). On 15 February 1990, the Coast Guard published corrections to the 26 December 1989 notice of proposed rulemaking (55 FR 5541). Interested persons were requested to submit comments and no comments were received.

Drafting Information: The drafters of these regulations are LT Kenneth Parris, project officer and CDR M.J. Williams, Jr., project attorney, Fourteenth Coast Guard District Legal Office, Honolulu, Hawaii.

Discussion of Comments: No comments were received. This regulation is issued pursuant to 33 U.S.C. 471, 2030, 2035, and 2071 as set out in the authority citation for all of part 110.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact

has been found to be so minimal that a full regulatory evaluation is unnecessary. The users of the port of Guam fall into six main categories; Naval Combatants, Deep Draft Commercial Shipping, Commercial Fishing Vessels, Small Passenger Boats, Dive Boats and Pleasure Boats. Since the new special anchorage will not extend into a shipping channel, encompass commercial fishing grounds, diving, tourist, or pleasure boat areas there should be no adverse impact on harbor use. The proposed new special anchorage encompasses an area seldom transited by recreational boaters and never transited by Naval or commercial vessels. The new special anchorage does not encompass any existing naval or general anchorage areas.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage regulations.

Final Regulations

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended as follows:

Part 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.129a is revised to read as follows:

§ 110.129a Apra Harbor, Guam. (Datum: WGS 84)

(a) The waters bounded by a line connecting the following points:

Latitude	Longitude
13°27'45.5"N	144°39'34.8"E
13°27'32.0"N	144°39'36.3"E

and thence along the shoreline to the point of beginning.

(b) The waters bounded by a line connecting the following points:

Latitude	Longitude
13°26'53.6"N	144°40'03.8"E
13°27'04.0"N	144°40'04.8"E
13°27'04.0"N	144°40'09.8"E
13°27'10.0"N	144°40'09.8"E
13°27'10.0"N	144°40'23.8"E
13°26'51.0"N	144°40'23.8"E
13°26'51.0"N	144°40'06.0"E

and thence to the point of beginning.

3. Section 110.238(a) is revised to read as follows:

§ 110.238 Apra Harbor, Guam.

(a) The anchorage grounds (Datum: WGS 84). (1) General Anchorage. The waters bounded by a line connecting the following points:

Latitude	Longitude
13°27'32.0"N	144°39'36.8"E
13°27'21.0"N	144°39'22.8"E
13°27'12.5"N	144°37'25.4"E

and thence along the shoreline to

Latitude	Longitude
13°27'45.5"N	144°39'34.8"E

and thence to the point of beginning.

(2) Explosives Anchorage 701. The water in Naval Anchorage A bounded by the arc of a circle with a radius of 350 yards and located at:

Latitude	Longitude
13°26'54.0"N	144°37'53.5"E

(3) Naval Explosives Anchorage 702. The waters in the General Anchorage bounded by the arc of a circle with a radius of 350 yards and with the center located at:

Latitude	Longitude
13°27'29.9"N	144°38'13.0"E

(4) Naval Anchorage A. The waters bounded by a line connecting the following points:

Latitude	Longitude
13°26'47.3"N	144°37'42.6"E
13°27'02.0"N	144°37'42.6"E
13°27'10.6"N	144°39'00.8"E
13°26'59.6"N	144°39'00.8"E
13°26'59.6"N	144°39'08.6"E
13°26'54.3"N	144°39'08.6"E
13°26'54.3"N	144°39'24.2"E
13°26'42.2"N	144°39'24.2"E
13°26'40.4"N	144°38'01.8"E

and thence to the point of beginning.

(5) Naval Anchorage B. The waters bounded by a line connecting the following points:

Latitude	Longitude
13°26'43.7"N	144°39'53.3"E
13°26'53.6"N	144°40'03.8"E
13°26'51.0"N	144°40'06.0"E
13°26'41.0"N	144°39'56.0"E

and thence along the shoreline to the point of beginning.

Dated: June 11, 1990.

W.C. Donnell,

Rear Admiral, U.S. Coast Guard, Commander, 14th Coast Guard District.

[FR Doc. 90–15360 Filed 7–2–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AD93

Loan Guaranty; Determination of Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: On July 19, 1989, the Department of Veterans Affairs (VA) published in the **Federal Register** (54 FR 30207) amendments to its loan guaranty regulations to revise the definition of the "net value" of a property to the Secretary of Veterans Affairs. Under the revised definition, the Government's cost of borrowing funds would have been taken into account in determining "net value". VA is now amending the definition of "net value" to exclude the cost of Government borrowing from the factors subtracted from fair market value in order to arrive at "net value". This revised definition conforms with the requirements of Public Law 101–237.

EFFECTIVE DATE: These amendments are effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, (202) 233–6376.

SUPPLEMENTARY INFORMATION: Under section 1810 of title 38, United States Code, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominum, or manufactured home which is treated as real estate under State law, or to install certain energy conservation features or other home

improvements. The guaranty is a promise by the Government to pay the holder a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

On July 19, 1989, VA published in the **Federal Register** (54 FR 30207) amendments to its loan guaranty regulations to revise the definition of the "net value" of a property to the Secretary. Net value is a concept used to determine whether a loan holder will be offered an election to convey a foreclosed property to the Secretary. The July 19, 1989, revised definition, had it taken effect, would have included the Government's cost of borrowing funds (imputed interest) in the formula for determining "net value."

On August 19, 1989, the Secretary of Veterans Affairs was enjoined by the U.S. District Court for the District of Columbia from enforcing this regulatory amendment, pending resolution of a lawsuit brought by the Mortgage Bankers Association. On December 18, 1989, the President signed Public Law 101–237, the Veterans' Benefits Amendments of 1989. Section 308 of that Act prohibits VA from including the Government's cost of borrowing funds in the formula for determining the "net value" of the property. As a result of the District Court injunction and the passage of Public Law 101–237, the final regulatory amendments published on July 19, 1989, have never taken effect. These amendments are designed to nullify and rescind the July 19, 1989, amendment to the definition of net value and revert to the previous definition, which did not include the Government's cost of borrowing funds. This revised definition conforms with the requirements of Public Law 101–237.

Since the VA's payment of a claim under the guaranty cannot include an imputed interest cost, it would serve no purpose to exclude any increase in the claim attributable to imputed interest from the veteran's debt. Accordingly, the change to § 36.4323(e) in the July 19, 1989, regulatory amendments, designed to exclude imputed interest from the veteran's debt, is also rescinded by this amendment. However, the changes to paragraphs (a), (b), and (g) of § 36.4323, which were editorial in nature, remain in effect.

These final regulations constitute interpretive rules. Moreover, VA for good cause finds that publication of proposed regulatory amendments in this case is unnecessary. Public Law 101–237 prohibits the inclusion of Government borrowing costs in the net value formula. The July 19, 1989, version of the regulations is in direct conflict with the law on this point and should be conformed as soon as practicable. Publication of this conforming amendment in proposed form would serve no purpose and would delay publication of the necessary correction.

Since a notice of proposed rule making is unnecessary and will not be published, these amendments do not come within the term.

Since a notice of proposed rule making is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in, and made subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). Nevertheless, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations simply assure that the VA's "net value" determinations reflect the formulas prescribed by section 1832(c) of title 38, U.S code for determining the cost to the Government of accepting conveyance of the property rather than paying the maximum claim. Lenders and holders of VA guaranteed loans will retain the right to payment of the full amount prescribed by law for claims on defaulted VA guaranteed loans. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of 603 and 604.

The regulatory amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulation changes. The regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more; cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Number is 64.114)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Veterans.

These amendments are promulgated under authority granted the Secretary by sections 210(c), 1803(c)(1), 1820 and 1832 of Title 38, United States Code.

Dated: June 6, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4301, the definition of "net value" is revised to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of real property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. For purposes of determination of net value, "property improvement" is defined as any repair which must be completed to satisfy minimum property requirements for existing construction as prescribed by the Secretary. Costs other than property improvement will be estimated as a percentage of the fair market value. Each year VA will review the average operating expenses incurred for properties acquired under § 36.4320 of this part which were sold during the preceding 3 fiscal years and the average administrative cost to the government associated with the property management activity. The cost items reviewed will be:

(1) *Property operating expenses.* All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.

(2) *Selling expenses.* All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) *Administrative costs.* An estimate of the total cost for VA of personnel compensation and overhead (including all travel, transportation, standards level user charges (SLUC), communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(i) Dividing the salary and benefits cost by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(ii) Dividing part (i) by the VBA ratio of personal services to total obligations.

The three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the 3 preceding fiscal years to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets.) The calculation of net value will be based on the actual costs incurred over the last 3 years. Based on fiscal year 1989 data, the percentage to be used when calculating net value will be 11.45 percent. The fiscal year and the percentage will be updated annually through a notice in the **Federal Register.**

(Authority: 38 U.S.C. 1832)

2. In § 36.4323, paragraph (e) is revised to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran.

(Authority: 38 U.S.C. 1832)

* * * * *

[FR Doc. 90-15366 Filed 7-2-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6784

[WY-930-00-4214-10; WYW 97431]

Withdrawal of Public Land for Bureau of Reclamation at Alcova Reservoir, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 320 acres of public land from surface entry and mining for a period expiring on February 8, 2038, for the Bureau of Reclamation. This land lies largely below the maximum water surface elevation (5,500 feet mean sea level) and needs to be included in the area withdrawn for Alcova Reservoir. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: July 3, 1990.

FOR FURTHER INFORMATION CONTACT: Tamara J. Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2072.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the land below the maximum water surface elevation at Alcova Reservoir and to protect capital investments made by the Bureau of Reclamation in this area:

Sixth Principal Meridian

T. 30 N., R. 83 W.,
Sec. 36, N½.

The area described contains 320 acres in Natrona County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire on February 8, 2038, unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 21, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-15387 Filed 7-2-90; 8:45 am]

BILLING CODE 4310-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 88-2, Phase I; FCC 90-134]

Communications Common Carriers; Computer Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission has generally reaffirmed its 1988 *BOC ONA Order*, 54 FR 3453 (Jan. 24, 1989), which approved in part the Open Network Architecture (ONA) plan of each of the Bell Operating Companies (BOCs), and required various modifications to each plan. Eleven parties petitioned for reconsideration of various aspects of that order. The Commission granted aspects of various petitions for reconsideration and denied the remaining petitions.

EFFECTIVE DATE: August 2, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Schlichting, Policy and Program Planning Division, Common Carrier Bureau (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (FCC 90-134), adopted April 12, 1990, released May 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Bell Operating Companies (BOCs) filed initial Open Network Architecture (ONA) plans on February 1, 1988, pursuant to the *Phase I Order*, 51 FR 24350 (July 3, 1986). Under the ONA requirements set forth in that order, the BOCs must unbundle basic service building blocks and offer all enhanced service providers (ESPs) equal access to these unbundled network elements. On November 17, 1988, the Commission adopted the *BOC ONA Order*, 54 FR 3453 (Jan. 24, 1989), approving in part the ONA plans of each of the BOCs. The Commission also ordered the BOCs to file ONA plan amendments, by May 19, 1989, addressing specifically identified deficiencies.

2. In the *BOC ONA Order*, The Commission approved the so-called "common ONA model," generally accepted as adequate the BOCs' proposed initial ONA service offerings, recognized the Information Industry Liaison Committee (IILC) as a proper vehicle for inter-industry efforts to address a number of technical ONA issues, concluded that ONA service offerings subject to "dual jurisdiction" as common carrier communications

services must be tariffed at both the state and federal level, and required the BOCs to file three-year deployment schedules for their ONA services.

3. Eleven parties filed petitions for reconsideration of the Commission's *BOC ONA Order*. In this Memorandum Opinion and Order on Reconsideration, the Commission generally affirmed its 1988 *BOC ONA Order*. The Commission, however, granted two aspects of the reconsideration petitions. First, the Commission found that certain Operations Support Systems (OSS) services should be classified as ONA services. These services are: service order entry and status; trouble reporting and status; diagnostics, monitoring, testing, and network reconfiguration; and traffic data collection. The Commission found that these services are useful to enhanced service providers and are properly treated as basic, regulated services themselves.

4. Second, the Commission changed the type of data disaggregation required in the BOC's installation and maintenance reports. The Commission found that the change would avoid unnecessary administrative costs, while adequately tracking any potential for discrimination.

5. The Commission adhered to the requirement that Basic Service Elements (BSEs) used as part of an end-to-end interstate communication must be tariffed at the federal level. The Commission found that critical federal policies ensuring the nationwide availability of enhanced services underlie this requirement, which in no way preempts the states from establishing their own tariffs for intrastate ONA services. The Commission stressed that it will continue to work with the states to accommodate state concerns in the ONA process.

6. The Commission also recognized the long-term importance of further unbundling to ONA. However, it retained an evolutionary approach to this issue and did not mandate a radical unbundling of the network on a "flash-cut basis." Although the Commission denied requests for reconsideration of the Customer Proprietary Network Information (CPNI) rules, it recognized that the manner in which these rules are implemented raises questions of informed customer choice and competitive equity. The Commission required that the BOCs propose solutions to these issues in the amended ONA plans that they are required to file in April 1991.

7. In a separate order concurrently adopted by the Commission (FCC 90-134, adopted April 12, 1990, released May 8, 1990), the Commission concluded that the amended plans comply substantially with the requirements of the *BOC ONA Order*. The Commission directed the BOCs to file amended ONA plans in April 1991. The Commission also established a process for removal of structural separation requirements and established procedures for ongoing oversight of the ONA process.

Ordering Clauses

8. *It is hereby ordered,* That pursuant to 47 U.S.C. 151, 154 (i) and (j), 201, 202, 203, 218, 303(n) and 405, and 6 U.S.C. 553, the petitions for reconsideration, partial reconsideration and/or clarification filed in this proceeding are denied, except as provided herein.

List of Subjects for Part 64

Communications common carriers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-15437 Filed 7-2-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 64

[CC Docket No. 88-2, Phase I; FCC 90-135]

Communications Common Carriers; Computer Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has approved the seven amended Open Network Architecture (ONA) plans submitted by the Bell Operating Companies (BOCs) pursuant to the Commission's *BOC ONA Order*, 54 FR 3453 (Jan. 24, 1989), subject to certain conditions. The Commission concluded that the amended plans filed in May 1989 substantially comply with the requirements of the *BOC ONA Order*, but required the BOCs to make minor specified changes.

EFFECTIVE DATE: August 6, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Schlichting, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, FCC 90-135, adopted April 12, 1990 and released May 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Bell Operating Companies (BOCs) filed initial Open Network Architecture (ONA) plans on February 1, 1988, pursuant to the *Phase I Order*, 51 FR 24350 (July 3, 1986). Under the ONA requirements set forth in that order, the BOCs must unbundle basic service building blocks and offer all enhanced service providers (ESPs) equal access to these unbundled network elements. On November 17, 1988, the Commission adopted the *BOC ONA Order*, 54 FR 3453 (Jan. 24, 1989), approving in part the ONA plans of each of the BOCs. The Commission also ordered the BOCs to file ONA plan amendments, by May 19, 1989, addressing specifically identified deficiencies.

2. In this Memorandum Opinion and Order, the Commission found that the amended ONA plans filed in May 1989 substantially complied with the directives of the Commission's *BOC ONA Order* and therefore approved the amended plans, subject to certain conditions. The Commission directed the BOCs to file minor amendments by July 15, 1990, and to submit at least one more amended ONA plan for Commission approval by April 15, 1991. The Commission also established a process for removal of structural separation requirements. In addition, the Commission established procedures for ongoing oversight of the ONA process. The Commission also noted that the amended plans reflect a significant increase in the number and uniformity of ONA services.

3. The Commission established the following requirements that the BOCs must satisfy in amendments to be filed by July 15, 1990.

(a) BellSouth, Southwestern Bell, and US West must amend their plans to delete any "blanket letter of agency" requirements for ESPs that order CNSs on behalf of their customers.

(b) Pactel must amend its initial deployment schedule as directed.

(c) Bell Atlantic must amend its plan to describe future services that are technically possible with new switch generics that it has scheduled for deployment.

(d) Each BOC must amend its plan to provide a consolidated CPNI definition.

(e) Each BOC must amend its plan to provide its proposed installation and maintenance report in compliance with the revised requirements of the *BOC ONA Reconsideration Order* (FCC 90–134).

(f) All BOCs using classifications other than BSA, BSE, CNS, or ANS must amend their plans to eliminate these classifications.

4. The Commission also directed the BOCs to file amended plans on April 15, 1991, reflecting progress on a number of issues, and set forth the following requirements for their amendments.

(a) Each BOC must file its annual deployment plan update for its ONA services as of July 1, 1992, 1993, and 1994.

(b) Each BOC must work through the IILC and amend its plan to clarify the specific information that it will make available to ESPs to allow them to bill for their services, as well as develop solutions for deliverying CNI, or possible CNI alternatives, to ESPs that purchase line-side connections.

(c) Each BOC must provide updated information on its OSS planning and implementation, and provide information concerning additional progress on the uniform provision of OSS.

(d) Each BOC must amend its plan to reflect any subsequent developments in the IILC reflecting procedures for providing confidentiality for ESPs' proprietary information.

(e) Each BOC must amend its plan to reflect progress on resolution of technical uniformity issues.

(f) Each BOC must amend its plan to reflect any additional progress at the IILC on the Cross Reference Guide.

(g) Each BOC must amend its plan to reflect progress on long-term uniformity issues.

(h) Each BOC must amend its plan to include copies of effective state tariffs for ONA services and to provide an explanation of the ratemaking methods that it employed in computing these tariffs.

(i) Each BOC must amend its plan to: (1) List all ONA service requests that it received from ESPs during the previous year, and the disposition of such requests; and (ii) identify progress on developing ONA capabilities responsive to ESP service requests previously deemed technically infeasible.

(j) Each BOC must amend its plan to describe its plans established since its previous amendments for developing and implementing CCS7, ISDN, and IN technologies, including a description of: (i) How it will unbundle the services provided through the use of such technologies and generally how those services will fit into the ONA framework; (ii) ONA services that these technologies could support; and (iii) its plans for offering such services.

(k) Each BOC must amend its plan to apply password/ID systems to all primary databases that are routinely accessed by enhanced services marketing personnel and that contain comprehensive restricted CPNI. For each database containing restricted CPNI for which a BOC does not propose to implement password/ID restrictions, it must also amend its plan to describe the following: (i) database name; (ii) database purpose; (iii) accessibility and frequency of use of enhanced services marketing personnel; (iv) types and amount of CPNI; and (v) method of access restriction.

(l) Each BOC must amend its plan to list all BSEs that it uses for its own enhanced service operations.

(m) Each BOC must amend its plan to address informed customer choice and competitive equity issues in implementing CPNI requirements.

5. The Commission lifted its structural separation requirements for each BOC once the BOC has completed initial ONA implementation. Each BOC is required to file a notice that it: (a) Is technically prepared to offer each of its initial ONA services; (b) has effective federal tariffs for interstate ONA services; and (c) has filed state tariffs for intrastate ONA services.

6. The Commission also stated that comparably efficient access by ESPs to Operations Support Systems (OSS) functions important to the provision of enhanced services in critical to ONA implementation. Because the current record in this proceeding did not permit the Commission to conclude that indirect gateways were now comparably efficient to direct access, the Commission required the BOCs' enhanced service operations to take the same OSS access that the BOC provides independent ESPs once the structural separation requirements are lifted.

7. The Commission also reaffirmed its commitment to ensuring that the BOCs provide ESPs with the underlying information necessary or useful for the performance of billing and collection functions. The Commission directed the BOCs to work through the Information Industry Liaison Committee (IILC) to complete its review of various technical issues associated with the provision of that information.

8. In a separate order concurrenty adopted by the Commission (FCC 90–134, adopted April 12, 1990, released May 8, 1990), the Commission generally reaffirmed its 1988 *BOC ONA Order*, after consideration of a number of petitions seeking reconsideration of various aspects of that order.

Ordering Clauses

9. *It is hereby ordered*, That pursuant to sections 1, 4 (i) and (j), 201, 202, 203, 205, 214, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201, 202, 203, 205, 214, 218, and 405, and 5 U.S.C. 553, the ONA plans of Ameritech, Bell Atlantic, BellSouth, NYNEX, Pactel, SWBT, and US West are approved, subject to the conditions described herein.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–15439 Filed 7–2–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ASW-15]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 212 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive inspections of the main rotor drag brace assembly on BHTI Model 212 helicopters. The proposed AD is needed to detect a crack in the drag brace assembly which could result in failure of the main rotor system and, as a result, loss of control of the helicopter.

DATES: Comments must be received on or before August 17, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, Docket Number 90-ASW-15, or delivered in duplicate to Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 90-ASW-15. Comments may be inspected at the above location in Room 158, Building 3B, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The AD-related material may be obtained from: Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Regional Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ASW-15." The postcard will be date/time stamped and returned to the commenter.

There have been eight reports of cracked main rotor drag brace assemblies on certain BHTI Model 212 helicopters. The cracks were attributed to high cycle, low stress fatigue with slow progression. A daily visual inspection is recommended by the manufacturer in the BHTI Model 212 maintenance manual, in addition to a magnetic particle inspection of the drag brace during the main rotor overhaul interval of 2,400 hours' time in service. Apparently these cracks have gone undetected during the daily inspection and are not being detected until the overhaul interval is reached.

Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require a magnetic particle inspection of the drag brace assembly at intervals of 1,200 hours' time in service between the current overhaul and inspection interval of 2,400 hours' time in service for the main rotor hub on BHTI Model 212 helicopters. The present inspection interval would be reduced by one half and would be mandatory.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves 770 aircraft at an added cost of $70 per aircraft per year for a total estimated cost of $53,900 for the inspections. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI): Applies to Bell Model 212 helicopters, certificated

in any category. (Docket No. 90-ASW-15)

Compliance is required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor drag brace assembly, which could result in loss of the helicopter, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD determine if drag brace assemblies, P/N 204-011-140-003 or -005, are installed in the main rotor hub assembly, P/N 204-012-101-009. For helicopters equipped with drag brace assembly, P/N 204-011-140-003 or -005, comply with the requirements of paragraph (b).

(b) For main rotor hub assemblies, P/N 204-012-101-009, with 1,200 or more hours' time in service, since new or since the last overhaul, on the effective date of this AD, comply with the following within the next 100 hours' time in service after the effective date of this AD. Thereafter comply at intervals of 1,200 hours' time in service from the last inspection:

(1) Remove the main rotor drag brace assemblies, P/N 204-011-140-003 or -005. Inspect for corrosion and mechanical damage. Magnetic particle inspect all parts (as specified in BHTI Component Repair and Overhaul Manual, BHT-212-CR&O-1).

(2) If cracks are found, or if corrosion or mechanical damage is present which cannot be removed within the rework limits of BHT-212-CR&O-1, replace with serviceable parts.

(3) Assemble the drag brace assemblies as specified in BHTI Component Repair and Overhaul Manual, BHT-212-CR&O-1, with the following additions:

(i) Apply a soft film corrosion preventive compound to the barrel threads prior to assembly.

(ii) Install the drag brace assemblies and torque the locking nuts to 275-325 foot pounds.

(iii) After first flight confirm the torque of 275-325 foot pounds, and apply a hard film corrosion preventive compound to the exposed threads.

(c) An alternative method of compliance which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

(d) Bell Helicopter Textron, Inc., Alert Service Bulletin 212-90-59, dated February 5, 1990, provides an acceptable means of compliance with this AD.

Issued in Fort Worth, Texas, on June 21, 1990.

A.J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-15377 Filed 7-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-108-AD]

Airworthiness Directives; Boeing Model 747-200 and 747-300 Series Airplanes Equipped with General Electric CF6-45 and CF6-50 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-200 and 747-300 series airplanes, which would require replacement of a pneumatic duct aluminum bracket with a steel bracket in the engine struts. This proposal is prompted by reports of an engine fire after landing, due to a fuel line leak. The fuel line had chafed as a result of contact with a pneumatic duct, due to a broken bracket. This condition, if not corrected, could result in an engine fire.

DATES: Comments must be received no later than August 13, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-108-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Propulsion Branch, ANM-140S; telephone (206) 431-1970. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-108-AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

An operator of a Boeing Model 747 series airplane reported an engine fire after landing. Fuel was found leaking from the fuel line which had come into contact with the pneumatic duct due to failure of the duct support bracket. This was the second report of a fractured bracket.

The existing brackets are made of aluminum. Failure to detect and correct failures of the pneumatic duct support brackets could result in chafing of the fuel line; this condition, if not corrected, could lead to an engine fire.

The FAA has reviewed and approved Boeing Service Letter 747-SL-54-32 dated December 4, 1989, which provides instructions for replacing the aluminum brackets (P/N 69B94023-1) in the outboard engine struts with stainless steel brackets (P/N 69B94023-2).

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the existing aluminum brackets with steel brackets, in accordance with the service letter previously described.

There are approximately 132 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the require actions, and that the average labor cost would be $40 per manhour. Cost of required parts in estimated at $410 per airplane. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be $3,900.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6-45 and CF6-50 engines, as listed in Boeing Service Letter 747-SL-54-32, dated December 4, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for an engine fire due to a fuel leak, accomplish the following:

A. Within the next 60 days or 450 hours time-in-service after the effective date of this AD, whichever occurs first, replace the aluminum pneumatic duct brackets, P/N 69B94023-1, in the outboard struts, with steel brackets, P/N 69B94023-2, in accordance with Boeing Service Letter 747-SL-54-32, dated December 4, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 22, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-15378 Filed 7-2-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-ASW-68]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) all Model B0105C and B0105S Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require installation of a continuous ignition system on all Messerschmitt-Bolkow-Blohm (MBB) Model B0105C and B0105S series helicopters that are operated in snow conditions. This proposed AD is needed to prevent engine flameouts and loss of engine power due to ingestion of water, snow, and ice associated with flight into snow which, in turn, could result in a subsequent emergency descent and possible loss of the helicopter.

DATES: Comments must be received on or before August 17, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, Docket Number 89-ASW-68, or delivered in duplicate to: 4400 Blue Mound Road, Room 158, Building 3B, of the Regional Rules Docket at the above address. Comments delivered must be marked: Docket Number 89-ASW-68. Comments may be inspected at the above location in Room 158, Building 3B, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The applicable service information may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, PA 19380.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Twa, FAA, Rotorcraft Standards Staff, ASW-110, Fort Worth, Texas 76193-0112; telephone (817)624-5158.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, arguments as they may desire, Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before taking action on the propose rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before an after the closing date for comments, in the Regional Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Forth Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89-ASW-68." The postcard will be date/time stamped and returned to the commenter.

This proposal is prompted by reports of engine flameouts which occur during or after flight in snow. Engine flameouts during critical flight maneuvers could result in loss of control of the helicopter.

Since this condition is likely to exist or develop on other MBB Model B0105C and B0105S series helicopters of the same type design, the proposed AD would require certain preflight inspections and the installation and use of a continuous ignition system when operating in snow conditions.

Service Bulletin B0–105–80–108, dated June 12, 1989, will be incorporated by reference in the adopted AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves approximately 36 aircraft that will be operated in snow conditions, and requries 4–5 manhour per helicopter at a cost of $40.00 per hour for a total cost of $6,000 to $7,200 for the affected fleet. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact; positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

Accordingly pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Messerschmitt-Bolkow-Blohm (MBB): Applies to all MBB Model B0105C and B0105S series helicopters, certificated in any category, that are operated in snow conditions.

[Docket No.89–ASW–68]

Compliance is required as indicated, unless already accomplished.

To prevent engine failure (flameout) resulting from ingestion of atmospheric moisture in engine inlets, which could result in loss of the helicopter, accomplish the following:

(a) Install a continuous ignition system in accordance with MBB Service Bulletin, SB–BO 105–80–108, "Optional Equipment-Retrofit of continuous ignition system," dated May 11, 1990.

(b) Incorporate into the applicable RFM the FAA-approved flight manual Revision No. 2/16, dated October 1, 1989 which includes the following paragraphs 2.8.2.4 and 2.8.2.5:

2.8.2.4 *Snow Conditions* Operation in snow is prohibited, except when the *Continuous Ignition System* (OPT 19) is installed and switched on. Prior to takeoff, snow and ice must be removed, particularly from the following areas:

—cabin roof
—transmission cowling interior in front of engine air intakes
—transmission compartment interior
—engine inlet deflector shield.

Note: After engine operation in snow make an entry in the logbook. Maintenance action is required in accordance with the Allison Operation and Maintenance Manual.

2.8.2.5 *Engine Inlet Deflector Shield*

The engine inlet deflector shield must be installed at all times.

Issued in Fort Worth, Texas, on June 21, 1990.

A.J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90–15379 Filed 7–2–90; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 90–ASW–27

Airworthiness Directives; Sikorsky Aircraft Model S–64E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require frequent checks of main rotor blades to detect a possible spar crack on Sikorsky Model S–64E helicopters. The proposed AD is needed to detect fatigue cracks in the main rotor blade spar which could result in the loss of the helicopter.

DATES: Comments must be received on or before August 17, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, Forth Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Forth Worth, Texas. Comments must be marked: Docket No. 90–ASW–27.

Comments may be inspected at the above location in Room 158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601–1381, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7111.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Office of Assistant Chief Counsel for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 90–ASW–27. The postcard will be date/time stamped and returned to the commenter.

There have been six reports of cracks in main rotor blade spars, which could lead to loss of the helicopter. Since this

condition is likely to exist or develop on other helicopters of the same type design the proposed AD would require checks of blade inspection method (BIM) systems on Sikorsky Model S-64E helicopters. The interval between the checks would depend on the primary operational use of the helicopter.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves seven aircraft at an approximate cost of $1,750 per aircraft for every 100 hours' time in service. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Sikorsky Aircraft: Applies to Model S-64E helicopters, certificated in any category. [Docket No. 90-ASW-27]

Compliance is required as indicated, unless already accomplished.

To prevent operation with a crack in the main rotor blade spar, which could result in possible loss of the helicopter, accomplish the following:

(a) Within the next 3 hours' time in service after the effective date of this AD, visually check the BIM pressure indicators of the main rotor blades for black or red color indication.

(b) Before further flight, replace any blade with black or red indication visible in the BIM pressure indication with an airworth part of the same part number unless the black or red indication is found to be the result of BIM system malafunction.

Note: Sikorsky Service Bulletin 64B15-4C pertains to operation, maintenance, and check of the main rotor blade with BIM.

(c) The checks required by this AD may be performed by the pilot and must be recorded in accordance with FAR 43.9. The record must be maintained as required by FAR 91.173, 121.380, or 135.439.

(d) Repeat the check required by paragraph (a) of this AD prior to the first flight of each day and thereafter at intervals not to exceed either—

(1) Three hours' time in service from the last check for helicopters engaged in seven or more external lifts per hour; or

(2) Five hours' time in service from the last check for helicopters engaged in either less than seven external lifts per hour or operation without external cargo.

(e) Prior to the first flight of each day, check the BIM pressure indicator for proper functioning as follows:

(1) Press in and hold the manual test lever (grenade-type handle) on the raised area of the handle over the pin-type actuation plunger. NOTE: Do not hold the indicator glass bulb as heat of the hand may change the internal reference pressure and result in an erroneous indicator reading.

(2) Depress the actuation plunger fully to shut off the pressure completely from the blade into the indicator. If necessary, press with the thumbs of both hands to overcome the plunger spring force. NOTE: If pressure is applied to the end of the lever or the flat area, the actuation plunger will not fully depress.

(3) Verify proper operation of the indicator by observing that a full-black or full-red (unsafe) indication appears in not less than 10 or more than 30 seconds after depressing the plunger for a temperature of −6.7 degrees C (20 degrees F) or above. At lower temperatures, extend the upper limit to the corresponding time listed below:

Temperature	Time (seconds)
−7.2 to −17.8 degrees C (19 to 0 degrees F)	35
−18.3 to −28.9 degrees C (−1 to −20 degrees F)	40
−29.4 to −40.0 degrees C (−21 to −40 degrees F)	50
−40.5 to −51.1 degrees C (−41 to −60 degrees F)	60

(4) Release the lever and observe that the black or red indication snaps back immediately, leaving an all-white or all-yellow (safe) indication.

(5) If the indicator does not meet the specified requirements, then either identify and correct the malfunction or replace the suspect main rotor blade with an airworthy blade of the same part number prior to further flight.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Fort Worth, Texas, June 21, 1990.

A.J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-15380 Filed 7-2-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-AGL-10]

Proposed Control Zone Establishment and Transition Area Alteration; Woodruff, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a control zone area, alter the existing transition area airspace near Woodruff, WI, and, change the airport name from Lakeland to Noble F. Lee Memorial Field Airport. The airport manager has requested a control zone due to increasing numbers of Visual Flight Rule (VFR) operations in the vicinity of Noble F. Lee Memorial Field during marginal and below VFR weather conditions. The existing situation includes commuter airlines, jet traffic, and air ambulances mixed with VFR operations. The intended effect of this action is to enhance safety for all potential users of this airspace. The establishment of a control zone will segregate aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace. The Woodruff, WI, transition area is being altered to accommodate existing Standard Instrument Approach Procedures (SIAP's) at Noble F. Lee Memorial Field, Woodruff, WI.

DATES: Comments must be received on or before August 16, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the

Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 90-AGL-10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AGL-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering amendments to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone area and modify the existing transition area airspace near Woodruff, WI, respectively.

The manager of Noble F. Lee Memorial Field Airport has requested this control zone due to the increasing number of VFR flights in the vicinity of airport during marginal and below VFR weather conditions. The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a 5.5-mile radius of the geographic center of Noble F. Lee Memorial Field Airport and within 2 statute miles each side of the 182° bearing from the airport, extending from the 5.5-mile radius to 6 miles south of the airport; and within 3 miles each side of the 348° bearing from the airport, extending from the 5.5-mile radius to 8.5 miles northwest of the airport. The control zone would be effective from 0700 to 1900 hours, local time, daily, May 1 to October 31; and, from 0800 to 1800 hours, local time, daily, November 1 to April 30.

The present transition area is being modified to accommodate existing SIAP's to Noble F. Lee Memorial Field Airport. The modification consists of adding an extension from the 9-mile radius to 10.5 miles east of the airport within 2.75 miles each side of the 110° bearing from the airport and extending from the 9-mile radius to 10 miles south of the airport within 2.5 miles each side of the 182° bearing from the airport.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the areas in order to comply with applicable visual flight rule requirements.

Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Woodruff, WI [New]

Within a 5.5-mile radius of Noble F. Lee Memorial Field Airport (lat. 45°55'47" N., long. 89°43'37" W.) within 2.75 miles each side of the 110° bearing from the Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 8 miles east of the airport, and within 2 miles each side of the 182° bearing from Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 6 miles south of the airport, and within 3 miles each side of the 348° bearing from the Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 8.5 miles northwest of the airport. The control zone shall be effective from 0700 to 1900 hours, local time, daily, May 1 to October 31; and, from 0800 to 1800 hours, local time, daily, November 1 to April 30.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Woodruff, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Noble F. Lee Memorial Field Airport (lat. 45°55'47" N., long. 89°43'37" W.), within 2.75 miles each side of the 110° bearing from Noble F. Lee Memorial Field extending from the 9-mile radius area to 10.5 miles east of the airport, and within 2.5 miles each side of the 182° bearing from Noble F. Lee Memorial Field extending from the 9-mile radius area to 10 miles south of the airport.

Issued in Des Plaines, Illinois, on June 22, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-15381 Filed 7-2-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 58

[Docket No. 90N-0095]

Good Laboratory Practice Regulations; Proposed Removal of Examples of Methods of Animal Identification

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations on good laboratory practice (GLP) for nonclinical laboratory studies to remove the examples of methods of animal identification given in 21 CFR 58.90(d). FDA has tentatively determined that this list of examples is not necessary to achieve the intent of the regulations, which is to assure that animals used in nonclinical laboratory studies be appropriately identified throughout the term of the study. The proposed change would not affect the responsibility of testing facilities to use humane methods of animal identification. Federal guidance on the humane care and use of research animals remains available. This proposed action is being taken in response to a citizen petition.

DATES: Comments by September 4, 1990. FDA is proposing that any final rule based on this proposed rule become effective 60 days after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: On July 28, 1989, a petition (89P-0320/CP) was submitted to FDA on behalf of People for the Ethical Treatment of Animals, P.O. Box 42516, Washington, DC 20015, and New England Anti-Vivisection Society, 330 Washington St., Boston, MA 02108, which requested that the GLP regulations (21 CFR Part 58) be amended to remove references to ear tag and ear punch in § 58.90(d) (21 CFR 58.90(d)) and, instead, to reference use of micro chip transponders as appropriate means for warm-blooded animal identification. Issues raised by the petitioners prompted FDA to develop and publish this proposed rule.

Section 58.90(d) of the GLP regulations requires that testing facilities have appropriate methods of animal identification, as follows:

> Warm-blooded animals, excluding suckling rodents, used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require the animals to be removed from and returned to their home cages for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each animal within an animal-housing unit shall appear on the outside of that unit.

The basis for this requirement was discussed in the preambles to the proposed and final GLP rules (November 19, 1976; 41 FR 51206 at 51214 and December 22, 1978; 43 FR 59986 at 60004, paragraph 157) and, most recently, in the preamble to the final rule (April 20, 1989; 54 FR 15923) which removed toe-clipping as an example of an appropriate method of animal identification. Agency conclusions presented in these various documents are summarized as follows:

1. Appropriate animal identification throughout a study is necessary to preclude animal mixups which could adversely affect the validity of study results.

2. Because of the varied nature of tests and test systems, the precise manner of animal identification should generally be left to the discretion of the test facility and to its animal care and use committee.

3. The humane care of test animals is a recognized and accepted scientific and ethical responsibility that is encouraged by various agency guidelines and the Animal Welfare Act.

4. Test facilities have the responsibility for selecting and using appropriate and humane methods of animal identification.

In 21 CFR 58.90(d), the agency listed examples of means of animal identification which were considered, in 1978, to be appropriate and humane. These examples included tattoo, toe-clip, color code, ear tag, and ear punch. The agency is aware of the existence of a number of additional alternative identification procedures such as use of branding, ear-notching, micro chip transponders, freeze-marking, hair clipping, photography, neck chains, collars, bands, and staining.

After the promulgation of the GLP regulations, the agency became aware of the increasing concern of laboratory animal veterinarians about the potential pain-inducing effect of toe-clipping and, therefore, FDA amended the regulations to discourage its use (54 FR 15923 at 15924). In that rule, FDA endorsed the use of the institution's animal care and use committee in determining whether toe-clipping would be acceptable as necessary in a particular study.

The agency agrees with the petitioners that inclusion of specific animal identification methods in FDA's regulations implies that the agency accepts these methods as humane. In addition, FDA never intended the list of examples of identification methods in 21 CFR 58.90(d) to be a comprehensive list of all appropriate and humane methods.

Instead of removing "ear tag" and "ear punch" from the GLP regulations and adding "micro chip transponder," as requested by the petitioners, the agency is proposing to remove all of the listed examples of animal identification.

Opinions on which methods of animal identification are humane may change. At the time of promulgation of the GLP regulations in 1978, toe-clipping was generally accepted as a humane procedure. However, in 1989, it was not so viewed except under very limited circumstances, and the GLP regulations were amended to reflect the change. It is not efficient for the agency to amend the regulations each time there is a change in ethical views. Nor is it efficient to amend the regulations each time a new method of animal identification is developed.

FDA's GLP regulations were intended to foster the humane treatment of animals used in nonclinical laboratory studies. However, the GLP regulations were not intended to provide a primary source of guidance concerning humane treatment of research animals. As stated in the preamble to the 1978 final rule, the agency agreed that FDA's GLP regulation need not duplicate requirements promulgated under the Animal Welfare Act (43 FR 59986 at 59987). Under the provisions of that act

and the Department of Agriculture's implementing regulations, humane treatment of research animals is required (7 U.S.C. 2131–2157; title 9 of the Code of Federal Regulations, Chapter I, Subchapter A). Each research facility is required to appoint an institutional animal care and use committee, which reviews and inspects the research facility's program for humane care and use of the animals (9 CFR 2.31).

Specifically with respect to research funded under certain Department of Health and Human Services (HHS) programs, research entities must both establish animal care committees and provide assurances of compliance with guidelines on the proper care and treatment of animals (42 U.S.C. 289d and "Public Health Service Policy on Humane Care and Use of Laboratory Animals"). Explicit guidance on humane treatment of research animals is also provided by HHS through the National Institutes of Health publication "Guide for the Care and Use of Laboratory Animals."

By proposing to remove the examples of methods of identification in 21 CFR 58.90(d), FDA is not proposing to add or remove a regulatory requirement. That is, this proposed amendment would not change any substantive requirements of the GLP regulations. The regulations would continue to require appropriate identification of warm-blooded animals under the same specified circumstances. The proposed amendment also would not affect the responsibility of testing facilities to use humane methods of animal identification.

Economic Impact

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this proposed rule. The agency has determined that the rule is not a major rule as defined by the Order. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulation would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Comments

Interested persons may, on or before September 4, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 and under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 58 be amended as follows:

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

1. The authority citation for 21 CFR part 58 continues to read as follows:

Authority: Sections 402, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371, 376, 381); secs. 215, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 262, 263b–263n).

§ 58.90 [Amended]

2. Section 58.90 *Animal care* is amended in paragraph (d) by removing the second parenthetical expression.

Dated: May 29, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–15383 Filed 7–2–90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5470

RIN 1004–AB56

[AA–230–04–6310–12]

Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of existing regulations in 43 CFR part 5470—Contract Administration—Modification—Assignment. It is necessary to amend the existing regulations to provide more flexibility in granting timber sale contract extensions for short periods when unusual circumstances beyond the control of a purchaser prevent completion of a contract by the expiration date. The proposed rulemaking would provide the authorized officer discretionary authority to extend timber sale contracts for a period of 30 days or less without reappraisal. The total purchase price of the contract would be paid as a condition of such extension.

DATES: Comments should be submitted by September 4, 1990. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. Because of economies of scale and to reduce administrative costs, the average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there are many seasonal restrictions put into timber sale contracts that tend to limit the length of operating seasons. These factors have caused some problems with our existing extension policy and the timber industry has asked the BLM to re-examine the requirement for reappraisal of timber sale contracts before granting an extension.

In more and more situations a purchaser makes a good faith effort to complete his/her contract by the expiration date only to have severe fire danger or an unusually wet spring or an early onset of winter weather preclude operations for a period of time and in turn prevent completion of the contract by the expiration date. In many of these cases, a very small amount of timber remains at the expiration date and only a short period of time is needed to complete the removal of the remaining timber. In such cases the purchaser can be required upon reappraisal to pay a

higher price for the remaining timber in order to get an extension of time, if the timber market has been rising since he/she purchased the sale. This penalizes the purchaser for conditions beyond its control. The BLM personnel are also required to spend considerable time to reappraise these timber sales for extensions, and in many cases the difference in value does not pay the administrative cost.

The proposed rulemaking would provide the authorized officer with discretionary authority to grant a single extension of time, not to exceed 30 days, without reappraisal, provided that the total purchase price has been paid. If an application for an extension of time for cutting and removal is requested at the end of the normal operating season or before the next normal operating season begins, the 30 day limitation will be construed to mean 30 days into the next operating season.

The principal author of this proposed rulemaking is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management (BLM).

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is required.

The Department of the Interior has determined under Executive order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 5470

Forests and forest products, Government contract, Public lands.

Under the authorities cited below, part 5470 of group 5000, subchapter E, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

1. The authority citation for part 5470 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 30 U.S.C. 601 et seq. 43 U.S.C. 1181e, unless otherwise noted.

2. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

(a) Written requests for extension shall be received prior to the expiration of time for cutting and removal. No extension may be granted without reappraisal as provided in § 5473.4–1, except as provided in § 5463.2(b) and § 5473.1(b). Reappraisal may be waived for an extension granted under § 5463.2(b) of this title only in a decision approved by the appropriate State Director, BLM.

(b) The authorized officer may grant an extension of time, not to exceed 30 days, or 30 days into the next operating season when time for cutting and removal expires less than 30 days from the end of the operating season or after the end of the operating season, and the total purchase price is paid prior to granting the extension. For the purposes of this provision "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location of the subject timber sale, or the time of year specified in the timber sale contract when such operations are permitted. No additional extensions may be granted without reappraisal.

§ 5473.4–1 [Amended]

3. Section 5473.4–1 is amended by inserting "(a)" into the first sentence of paragraph (a) after "5473.1."

Dated: May 14, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90–15344 Filed 7–2–90; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 89–88; FCC 90–196]

Discrimination in Provision of Satellite Delivered Superstation and Network Station Programming

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; further notice of inquiry.

SUMMARY: This Further Notice of Inquiry seeks comments on whether or not satellite carriers, as defined in the Satellite Home Viewer Copyright Act of 1988, are discriminating against distributors to home satellite antenna users in favor of cable operators in the provision of superstation and network station programming. The intended affect is to solicit a more comprehensive record on the issue of possible unlawful discrimination in the provision of superstation and network station programming by satellite carriers.

DATES: Comments must be submitted on or before August 27, 1990 and reply comments on or before September 28, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman at (202) 634–1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Inquiry into the Existence of Unlawful Discrimination by Satellite Carriers Against Distributors in the Provision of Satellite Delivered Superstation and Network Station Programming, General Docket No. 89–88, FCC No. 90–196, adopted May 10, 1990 and released June 21, 1990.

The full text of this document is available for inspection and copying during normal business hours in the Public Reference Room at FCC headquarters, Room 239, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the FCC's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. On December 29, 1989 the Commission released a report on the extent to which satellite carriers are unlawfully discriminating in providing superstation and network station programming to distributors for private home viewing by satellite dish owners. The report which was prepared pursuant to the Satellite Home Viewer Copyright Act of 1988 (SHVA) concluded that the record presented did not indicate a general pattern of unlawful discrimination by satellite carriers among the various entities operating as distributors of superstations and network stations to home earth stations.

2. Evidence was submitted that indicated that satellite carriers are charging higher rates for programming to earth station distributors, than rates charged for cable distribution. The record compiled thus far contains little or no information as to the reasons for these differences, making it impossible for the Commission to determine whether the higher rates are just and reasonable.

3. This Further Notice specifically addresses the question of whether cable television system operators or other video program service providers such as satellite master antenna systems (SMATV) or wireless cable systems are receiving more favorable treatment from satellite carriers than are earth station distributors. Commenters are requested to address the following questions:

(a) Are services to distributors and other video programming providers such as cable television system operators "like" for purposes of determining if unlawful discrimination exists?

(b) Do satellite carriers charge higher prices to, or engage in more burdensome practices with, home earth station distributors than cable television system operators or other video service providers for superstation and network station programming?

(c) Are there cost or other factors that justify higher charges or more burdensome practices by satellite carriers with respect to distributors? If so, what are the specific costs involved in serving distributors as compared to the rates charged for programming?

(d) If unlawful—*i.e.*, unjustified—discrimination exists, what remedial action should the Commission take and pursuant to what jurisdictional authority?

4. In addition to the information provided by commenters, the Commission has requested several entities that function as satellite carriers to produce certain contracts with video service providers in order that the record compiled in this proceeding is complete and accurate.

Conclusion

5. This Notice is designed to solicit a more comprehensive record on the issue of possible unlawful discrimination in the provision of superstation and network station programming by satellite carriers. The Commission welcomes comments from all interested parties and especially requests the submission of detailed, specific information, documentation, contracts and any proposals for rules.

Administrative Matters

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file on or before August 27, 1990, and reply comments on or before September 28, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554 and in the Domestic Facilities Reference Room (room 6220), 2025 M Street, NW., Washington, DC 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (202) 632–7000.

7. Authority for issuance of this Notice of Inquiry is contained in sections 4(i) 303(r), 403 and 713 of the Communications Act of 1934, as amended (47 U.S.C. sections 154(i), 303(r), 403 and 713).

List of Subjects in 47 CFR Part 2

Inquiries.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–15439 Filed 7–2–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 900497–0097]

RIN 0648–AD40

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes an amendment to the regulations implementing the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). The amendment would make it a Federal requirement that catch and effort data associated with all bottomfish and seamount groundfish caught by fishing vessels of the United States be reported to the State of Hawaii, the Territory of American Samoa, and the Territory of Guam in compliance with each area's respective laws and regulations. Current Federal regulations only require that fishermen with Federal bottomfish/seamount groundfish fishing permits for the Northwestern Hawaiian Islands (NWHI) must comply with catch reporting requirements of the State of Hawaii. The intended effect of this action would be to improve the ability of NMFS, American Samoa, Guam, and Hawaii to monitor all catches of bottomfish and seamount groundfish management unit species (BMUS) and the effort expended in making the catches. This effect would only be achieved with respect to either American Samoa or Guam after the Territory has adopted a mandatory reporting requirement. This proposed rule would foster cooperative and coordinated efforts among NMFS, U.S. Coast Guard, and state/territorial enforcement agents in ensuring compliance by domestic fishermen with state/territorial catch reporting requirements without imposing additional Federal data collection requirements.

DATES: Comments on the proposed rule must be received on or before August 2, 1990.

ADDRESSES: Send comments on the proposed rule to E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90732–7415.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213–514–6660), or Alvin Katekaru, Pacific Area Office, Honolulu, Hawaii (808–955–8831).

SUPPLEMENTARY INFORMATION: The bottomfish and seamount groundfish fisheries in the western Pacific are managed by the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. As long as the data collection and catch reporting systems of the State of Hawaii and the Territories of American Samoa and Guam provide the Secretary of Commerce with adequate statistical information necessary for management, no Federal reports are required of domestic fishermen or processors engaged in the bottomfish and seamount groundfish fisheries of the U.S. Exclusive Economic Zone (EEZ) of the

western Pacific region. The existing systems of the State of Hawaii (mandatory reporting), American Samoa (voluntary reporting at present) and Guam (voluntary reporting at present) are the most comprehensive depositories of catch and effort data available on the BMUS. These local systems have weaknesses due to lack of reporting and misreporting of catch information by domestic fishermen. The intended long-term effect of this proposed rule is to: (a) Facilitate improved monitoring and assessment of the bottomfish and seamount groundfish fisheries; (b) evaluate the impacts of possible catch restrictions upon the BMUS within and outside the EEZ; (c) develop and refine measurable indicators for monitoring the status of stocks of BMUS; and (d) regulate the domestic fishing fleet to diminish gear conflicts. This action is consistent with one of the objectives of the FMP: to improve the data base for future decisions through data reporting requirements and cooperative programs between Federal and state/territorial agencies.

The State of Hawaii fisheries data reporting requirements are contained in *Hawaii Revised Statutes* Section 189. Licensed commercial fishermen are required to submit information on gear, day and area fished, catch by species, amount sold, port of landing, and other information to the Hawaii Division of Aquatic Resources on a monthly basis within a specified time limit. American Samoa and Guam have only voluntary reporting requirements; however, the intent of the proposed action is to have in place the authority needed to strengthen the data collecting and catch reporting systems in American Samoa and Guam when reporting requirements; in these areas are established in the future. The two territories have prepared draft rules for public hearing which require dealers to report all landings.

At present there is a Federal requirement that fishermen with a Federal NWHI bottomfish fishing permit must comply with data reporting requirements of the State of Hawaii. The effectiveness of this approach is the basis for extending the reporting requirements to all BMUS taken from within the EEZ of the main Hawaiian islands, American Samoa, and Guam. The proposed action would make it a Federal violation for domestic fishermen to falsify or fail to submit catch and landings reports covering the BMUS in the exact manner required by applicable state and territorial laws.

There are no foreseeable environmental or economic effects from implementing the proposed regulatory change because the action is not expected to affect the amount of BMUS harvested, or the species composition of the catch, or the time and location of fishing activity. This is an administrative action which should have no effect on marine resources, ocean and coastal habitats, or public health and safety. No additional Federal reporting requirements are being proposed. It is the intent of NMFS to build upon existing state, territorial, and NMFS data collection systems to obtain data needed by the Western Pacific Fishery Management Council (Council) to effectively monitor the fisheries to the benefit of the fishermen themselves. The long-term effects from the proposed action are expected to be a much better understanding of bottomfish and seamont fish stocks and fisheries, and an increase in the quality of the knowledge necessary to manage the domestic fisheries. This proposed action should result in improved compliance by domestic fishermen with state and territorial fish catch reporting requirements. The fisheries offices of the State of Hawaii and the Territories of American Samoa and Guam have endorsed the need for the proposed action.

Classification

The proposed rule is published under authority of section 305(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act) and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the bottomfish and seamount groundfish resources of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that the proposed rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by NOAA Directive 02–10, because it would not result in any significant change from the status quo and because the reporting of landings data is routine with limited potential for effect on the human environment. The proposed action should result in providing an effective means of obtaining better reporting of catches by fishermen in compliance with state and territorial laws and regulations.

The Under Secretary also has determined that it is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, because it does not create any additional burdens. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Assistant Administrator has determined that these rules will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of American Samoa, Guam, and Hawaii. This determination has been submitted for review to the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 683 is proposed to be amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for 50 CFR part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.4, a new paragraph (c) is added to read as follows:

§ 683.4 Recordkeeping and reporting.

* * * * *

(c) Any person who is required to do so by the applicable State laws and regulations, shall make and/or file any and all reports of bottomfish and seamount groundfish landings, containing all data and in the exact manner, required by the applicable State laws and regulations.

§ 683.6 [Amended]

3. In § 683.6, paragraph (g), "§ 683.11" is revised to read "§ 683.4 (b) and (c)."

§ 683.11 [Removed]

4. Section 683.11 is removed.

[FR Doc. 90-15354 Filed 7-2-90; 8:45 am]
BILLING CODE 3510-22-M

---

50 CFR Part 685

[Docket No. 900498-0098]

RIN 0648-AD41

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes an amendment to the regulations implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The amendment would make it a Federal requirement that catch and effort data on all fisheries for Pelagic Management Unit Species (PMUS) such as billfish and associated species caught by fishing vessels of the United States be reported to the State of Hawaii, the Territory of American Samoa, and the Territory of Guam in compliance with each area's respective laws and regulations. The intended effect of this action would be to improve the ability of the NMFS, American Samoa, Guam, and Hawaii to monitor the catches of PMUS, and the effort expended to make the catches. This effect would only be achieved with respect to either American Samoa or Guam after the Territory has adopted a mandatory reporting requirement. This proposed rule would foster cooperative and coordinated enforcement efforts among the NMFS, the U.S. Coast Guard, and state/territorial enforcement agents in ensuring compliance by domestic fishermen with state/territorial catch reporting requirements imposing additional Federal data collection requirements.

DATES: Comments on the proposed rule must be received on or before August 2, 1990.

ADDRESSES: Send comments on the proposed rule to E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731-7415.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213-514-6660), or Alvin Katekaru, Pacific Area Office, Honolulu, Hawai (808-955-8831).

SUPPLEMENTARY INFORMATION: Fisheries for billfish and associated species in the western Pacific are managed by the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. As long as the data collection and catch reporting systems of the State of Hawaii and the Territories of American Samoa and Guam provide the Secretary of Commerce with adequate statistical information necessary for management, no Federal reports are required of domestic fishermen or processors engaged in the pelagic fisheries of the U.S. Exclusive Economic Zone (EEZ) of the western Pacific region. The existing data systems of the State of Hawaii (mandatory reporting), American Samoa (voluntary reporting at present) and Guam (voluntary reporting at present) are the most comprehensive depositories of catch and effort data available on billfish and other migratory fish. These local systems have weakness due to lack of reporting and misreporting of catch information by domestic fishermen. The intended long-term effect of this proposed rule is to: (a) Facilitate improved monitoring and assessment of the pelagic fisheries; (b) evaluate the impacts of possible catch restrictions upon the PMUS within and outside the EEZ; (c) develop and refine measurable indicators for monitoring the status of stocks of pelagic fish; and (d) to regulate the domestic fishing fleet to diminish gear conflicts. This action is consistent with Objective 9 of the FMP to improve the statistical base for better stock assessments, and for making better decisions to conserve and manage highly migratory resources throughout their range in the Pacific Ocean.

The State of Hawaii fisheries data reporting requirements are contained in *Hawaii Revised Statutes* Section 189. Licensed commercial fishermen are required to submit information on gear, day and area fished, catch by species, amount sold, port of landing, and other information to the Hawaii Division of Aquatic Resources on a monthly basis within a specified time limit. American Samoa and Guam have only voluntary reporting requirements; however, the intent of the proposed action is to have in place the authority needed to strengthen the data collecting and catch reporting systems in American Samoa and Guam when reporting requirements in these areas are established in the future. The two territories have prepared draft rules for public hearing which require dealers to report all landings.

At present there is no Federal requirement that domestic fishermen and processors who are engaged in or are dependent upon the pelagic fisheries of the EEZ must comply with State and territorial data reporting laws and regulations. The proposed action would make it a violation of Federal rules for domestic fishermen to falsify or fail to submit catch and landings reports covering the PMUS in the exact manner as required by applicable state and territorial laws.

There are no foreseeable environmental or economic effects from implementing the proposed regulatory change because the action is not expected to affect the amount of PMUS harvested, or the species composition of the catch, or the time and location of fishing activity. This is an administrative action that should have no effect upon marine resources, ocean and coastal habitats, or public health and safety. No Federal reporting requirements are being proposed. It is the intent of the NMFS to build upon existing state, territorial, and NMFS data collection systems to obtain data needed by the Western Pacific Fishery Management Council (Council) to effectively monitor the pelagic fisheries and achieve the goals and objectives of the FMP. The long-term effects from the proposed action are expected to be a much better understanding of pelagic fish stocks and fisheries, an increase in the quality of the knowledge necessary to manage the domestic fisheries. This proposed action should result in improved compliance by domestic fishermen with state and territorial catch reporting requirements. The fisheries offices of the State of Hawaii and the Territories of American Samoa and Guam have endorsed the need for the proposed action.

Classification

The proposed rule is published under authority of section 305(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. *et seq.* (Magnuson Act) and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the pelagic resources of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that the proposed rule falls within a categorical exclusion from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by NOAA Directive 02–10, because it would not result in any significant change from the status quo and because the reporting of landings data is routine with limited potential for effect on the human environment.

The Under Secretary also has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.*, because it does not create any additional burdens. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The assistant Administrator has determined that these rules will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of American Samoa, Guam, and Hawaii. This determination has been submitted for review to the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 685 is proposed to be amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.4, the current text is designated paragraph (a) and a new paragraph (b) is added to read as follows:

§ 685.4 Recordkeeping and reporting.

* * * * *

(b) any person who is required to do so by the applicable State laws and regulations shall make and/or file any and all reports of billfish and associated species landings, containing all data and in the exact manner, required by the applicable State laws and regulations.

3. In § 685.5, a new paragraph (d) is added to read as follows:

§ 685.5 Prohibitions.

* * * * *

(d) Falsify or fail to make and/or file any and all reports of billfish and associated species landings, containing all data and in the exact manner, required by the applicable State laws and regulations, as specified in § 685.4(b), provided that the person is required to do so by the applicable State laws and regulations.

[FR Doc. 90–15355 Filed 7–2–90, 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption From Appeal; Tule River Ranger District, Sequoia National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Tule River Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal two decisions resulting from the analysis of severe timber mortality on the Tule River Ranger District on the Sequoia National Forest. The Tule River West Side Salvage and North Road Salvage environmental documents are being prepared in response to unusual mortality caused by drought and related insect infestation.

The projects both propose approximately 45% helicopter, 45% tractor, and 10% cable yarding methods. Harvest on 35% and less slopes will be by tractor yarding methods and helicopter or cable yarding will be used on slopes greater than 35%. No new road construction is proposed. Tule River West Side Salvage proposes to harvest approximately 5 million board feet (MMBF) of timber and the North Road Salvage proposes approximately 4 MMBF.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of four consecutive years of below normal precipitation. The drought has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. The entire Tule River Ranger District is experiencing mortality well above average for the rest of the Forest.

Trees subject to insect attack not only act as hosts for the insects which move on to healthy trees, but also deteriorate very rapidly although harvest of affected trees will probably not be effective in reducing the spread of the infestation. The commercial value of lumber recovered from infested trees declines rapidly as the wood deteriorates. Prompt removal of the dead and dying timber minimizes value and volume loss. In addition, excessive numbers of dead trees produce heavy fuel concentrations which makes wildfire control extremely difficult.

It is likely that helicopter logging will be in progress in the vicinity of the Tule River drainage system during the summer of 1990. If the proposed insect salvage project is not delayed due to appeals, it is possible that the helicopter contractors will still be in the area and available to bid on contracts for the helicopter salvage portions of the proposed projects. If the proposed helicopter projects are delayed by appeals, it is likely that the helicopter contractors will have completed their current contracts and will not be available to bid on the proposed helicopter salvage. If this happens, it is likely that there will be no bids on the helicopter portions of the proposed projects.

In addition, helicopter logging is costly and timber value must be relatively high for a sale to be economically feasible. If dead timber is not removed promptly, the decline in value caused by deterioration will prevent its removal by helicopter logging systems. For these reasons, it is necessary to remove dead and dying timber as soon as possible. While ground-based logging systems are less costly, it is still prudent to act promptly to recover as much value as possible and to reduce the threat of wildfire.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals two decisions relating to the harvest and restoration of lands affected by drought-induced timber morality in the Tule River drainage system, Sequoia National Forest. The environmental documents being prepared will address the effects of the proposed action on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective July 3, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or James A. Crates, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784–1500.

ADDITIONAL INFORMATION: From February to May 1990, pursuant to 40 CFR 1501.7, scoping was conducted by the Tule River District Ranger to determine the issues to be addressed in the environmental analyses. The Forest Service is expected to complete the environmental documentation for the Tule River West Side Salvage project in late June 1990 and complete the environmental documentation for the North Road Salvage project in early July 1990. The environmental documents and related maps will be available for public review at the Tule River Ranger Station, 32588 Highway 190, Porterville, CA 93257, and at the Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring on the Tule River District involves approximately 50,000 acres of National Forest land on the Sequoia National Forest. Approximately 9 MMBF of timber, valued at about $1,200,000, is presently being considered for salvage. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Tulare County will share 25% of the selling value for timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

Giant Sequoia Groves, Spotted Owl Habitat Areas, spotted owl nesting sites, Class I & II Streamside Management Areas, and Roadless Areas will not be harvested.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field

season. These delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Dated: June 27, 1990.

Lawrence Bembry,

Deputy Regional Forester.

[FR Doc. 90-15398 Filed 7-2-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Nescopeck Creek Watershed, PA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622) the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Nescopeck Creek Watershed project, Luzerne County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Duncan, State Conservationist, Soil Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110-2993, telephone (717) 782-4453.

SUPPLEMENTARY INFORMATION: A determination has been made by Richard N. Duncan that the proposed works of improvement for the Nescopeck Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until sixty (60) days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and Local clearinghouse review of Federal and federally assisted programs and projects is applicable.

Dated: June 20, 1990.

Richard N. Duncan,

State Conservationist.

[FR Doc. 90-15352 Filed 7-2-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Department of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of an application received by the Secretary of State requesting a permit for a foreign fishing vessel to operate in the Exclusive Economic Zone under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). Specifically, the Union of Soviet Socialist Republics has submitted an application to conduct a joint venture (JV) for Illex squid in the Northwest Atlantic Ocean. The application requests 3,000 metric tons of Illex squid be made available for the JV. The large stern trawler/processor ZAOSTROVJE is identified as the vessel which will receive Illex squid from U.S. vessels. Send comments on this application to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

FOR FURTHER INFORMATION CONTACT: John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2337).

Dated: June 27, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-15356 Filed 7-2-90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7,098,977, "Improved Vaccine against Rotavirus Disease," to Wyeth-Ayerst Laboratories, a Division of American Home Products Corporation, having a place of business in Philadelphia, PA 19101. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers a new method for producing live, attenuated rotavirus strains suitable for preparing a vaccine. It is demonstrated that a naturally attenuated rotavirus recovered from newborn or other individuals who have undergone asymptomatic infection can be used for immunization or that a virulent rotavirus can be converted into an attenuated strain by substituting the conserved fourth rotavirus gene segments of a naturally attenuated rotavirus in the genome of the virulent rotavirus.

The availability of the invention for licensing was published in the Federal Register Vol. 53, No. 9 (1988).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas, J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-15385 Filed 7-2-90; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Citrus Associates of the New York Cotton Exchange; Proposed Amendments Relating to Frozen Concentrated Orange Juice-1 Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Citrus Associates of the New York Cotton Exchange (CANYCE or Exchange) has submitted a proposal to amend certain terms and conditions of the Exchange's frozen concentrated orange juice (FCOJ–1) futures contract relating principally to the quality specifications for deliverable FCOJ and the contract's delivery points.

In accordance with section 5a(12) of the Commodity Exchange Act, and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATES: Comments must be received on or before August 2, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CANYCE FCOJ–1 futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The Exchange's proposed amendments to the FCOJ–1 futures contract would:

(1) Add the following new delivery points for the futures contract: Wilmington, Delaware, including any point within 15 miles of the city limits of Wilmington; Port Elizabeth, New Jersey, including any point within 15 miles of the city limits of Elizabeth, New Jersey; and Newark, New Jersey, including any point within 15 miles of the city limits of Newark. The proposed new delivery points will supplement the contract's existing Florida delivery area which will continue to serve as an eligible delivery area for the contract. Delivery at the above new delivery points, as well as in Florida, would be at par.

(2) Require that any FCOJ delivered on the contract must meet all laws, rules, regulations, and standards of identity imposed by the State of Florida, in addition to the existing requirement that FCOJ must meet the requirements of the United States government, so that FCOJ delivered at any delivery point on the contract will be eligible to be tendered and/or retendered at any designated delivery point in Florida.

(3) Narrow the range of Brix-value-to-acid ratio of FCOJ acceptable for delivery, to not less than 14.0 nor more than 18.0 from not less than 13.0 nor more than 19.0.

The Exchange also submitted conforming amendments intended to facilitate transition of trading from the current contract's specifications to the amended contract's specifications.

The Exchange indicates that the proposed amendments will incorporate within its currently trading FCOJ–1 futures contract certain of the provisions of the Exchange's new FCOJ–2 futures contract.[1] In this respect, the Exchange indicates that at present it is planning to trade only one FCOJ futures contract and that many of the benefits that would have flowed from trading the new FCOJ–2 futures contract are more easily derived by simply amending the FCOJ–1 futures contract. In particular, the Exchange believes that allowing delivery at the proposed new delivery points would enhance the supply of FCOJ available for delivery on the contract. In addition, the Exchange believes that the proposal to narrow the Brix-value-to-acid-ratio range for deliverable FCOJ is consistent with the majority of FCOJ transactions in the cash market. The Exchange also indicates that the proposal to require that FCOJ delivered on the futures contract at any delivery point must meet the highest federal and Florida state laws, rules, regulations and standards of identity, in additon to the other quality requirements currently specified or proposed for the contract, should not preclude delivery of FCOJ at the proposed new delivery points. In this regard, the Exchange notes that, at present, the highest government requirements are set by the U.S. Department of Agriculture, the U.S. Food and Drug Administration, and the Florida Department of Citrus and that it does not expect this situation to change in the future.

The Exchange intends to make the proposed amendments effective beginning with the September 1991 contract month and for all subsequently listed contract months. The Exchange indicated that it will not list the September 1991 contract month for trading until it has received Commission approval of these proposals.

The Commission is seeking comment regarding the impact of the proposed amendments on the supply of FCOJ available for delivery on the contract as a consequence of the reduced acceptable range of the Brix-value-to-acid ratio of deliverable FCOJ and the addition of the proposed new delivery points. In addition, the Commission also is requesting comment on the extent to which the proposed par delivery specification for the proposed new delivery points reflects cash market pricing relationships between the new proposed delivery points and the contract's existing Florida delivery area.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washingon, DC 20581. Copies of the proposed amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Informaton Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the pecified date.

Issued in Washington, DC, in June 27, 1990.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 90–15407 Filed 7–2–90; 8:45 am]

BILLING CODE 6351–01–M

[1] The Exchange was designated by the Commission as a contract market in FCOJ–2 futures on April 5, 1990. Among other things, the FCOJ–2 futures contract provides for delivery in the existing Florida delivery area of the FCOJ–1 futures contract and at the same delivery points as those now being proposed by the Exchange for addition to the FCOJ–1 contract. The Exchange has not listed the new FCOJ–2 futures contract for trading since the date of its designation by the Commission.

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Environmental Impact Statement Guam Urunao Resort Corporation Property, Territory of Guam

The United States Air Force plans to prepare an Environmental Impact Statement (EIS) to study the environmental impacts associated with a public access easement across Northwest Field, Andersen Air Force Base. That easement would be granted

to the Guam Urunao Resort Corporation (GURC) and would connect the GURC property with Route 3, Territory of Guam and would allow the development of the Urunao Beach area into a resort complex.

GURC has applied for an easement permitting public access along the Andersen Air Force Base perimeter road thereby connecting the GURC proposed development project to a public highway (Route 3). The proposed development is a consequential action of the road easement. The proposed resort is on an estimated 400 acres and will conceptually consist of 2,000 hotel rooms, 1,000 condominium units, commercial shops, health clubs, an 18-hole golf course, public park, wildlife reserve, parking and utility areas. The site is an undeveloped strand and foreshore, limestone forest and cliffs. The site is currently under consideration under section 7 of the Endangered Species Act for designation as critical habitat. Mitigation measures are proposed for expected loss of forest and the potential disturbance to cultural sites through the designation of a habitat reserve, improvement of public access, display of cultural sites and the creation of an additional public beach.

Alternatives to be considered to the proposed public access and development include a central route from Route 3 as it begins to parallel the cliff face and southern route at Pugua Point.

Public scoping meetings will be conducted in GUAM and or Hawaii approximately 15 to 30 days from the date of publication in the **Federal Register**. Notice of the time and place of the proposed scoping meetings will be made available to public officials and announced in the news media in the area where the meetings will be held.

To ensure sufficient time is available to consider public environmental issues in the EIS, each environmental issue should be forwarded to the addressee listed below by August 1, 1990. However, comments will be accepted at any time during the environmental impact analysis process. For further information concerning the study of Urunao Beach and the related EIS, please contact the Director of Programs; Attention Mr. George Fujimoto, HQ PACAF/DEP, Hickam AFB, HI 96853-5001.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-15397 Filed 7-2-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Notice of Public Hearing for Draft Environmental Impact Statement for Proposed New Dredging at Naval Air Station Alameda and Naval Supply Center Oakland, San Francisco Bay, CA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed new dredging at Naval Air Station (NAS) Alameda and Naval Supply Center (NSC) Oakland, San Francisco Bay, California.

Deeper depths are needed at NAS Alameda and at NSC Oakland to provide adequate clearance for aircraft carriers and supply ships. At Nas Alameda, new dredging is proposed to deepen the carrier berthing areas to −50 feet mean lower low water (MLLW) from the present −42 feet MLLW. At NSC Oakland, new dredging is proposed to deepen the present −35 feet maintenance level for supply ships to −38 feet and −41 feet MLLW in pier and channel areas. Dredging quantity is approximately 600,000 cubic yards at NAS Alameda and 1,000,000 cubic yards at NSC Oakland. Included is an allowable overdredge of up to 2 feet.

The dredging is scheduled to begin around the end of 1990. Dredging would probably be performed with a clamshell dredge and would take up to 6 months. Maintenance dredging quantities would be increased up to 15% and NSC Oakland and 2% at NAS Alameda. The dredged material would be disposed of in one of the following ways: by upland disposal on Skaggs Island by slurry pipeline from Mare Island or from the Petaluma River, by deep ocean disposal on the continental slope at a former munitions dumping site 40 to 50 miles west of the Golden Gate, or at the approved Alcatraz aquatic disposal site in San Francisco Bay.

Impacts are analyzed in the DEIS and include water quality and sediment quality impacts at the dredging and disposal sites, impacts to herring during their spawning season, impacts to wetland areas and possible endangered species habitat by the slurry pipeline and by the levee construction at Skaggs Island, possible increased salt water intrusion to aquifers, temporary air quality impacts from diesel pumps, and possible impacts to fisheries and water quality for the Alcatraz disposal alternative. The upland and ocean disposal alternatives are co-preferred.

The DEIS has been distributed to various federal, state, local agencies, local elected officials, interest groups and the media. The DEIS has also been distributed to the following local libraries:

Oakland Library, 125 14th Street, Oakland, CA,

Alameda Library, 2264 Santa Clara Street, Alameda, CA,

San Francisco Civic Center Library, Larking and McAlister, San Francisco, CA,

Sonoma Valley Library, 755 West Napa, Sonoma, CA.

A limited number of single copies are available at the address listed at the end of this announcement.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on July 17, 1990, beginning at 7:30 pm in the Kaiser Center, 300 Lakeside Drive, Oakland California.

The public hearing will be conducted by the U.S. Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record all statements shoud be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight shall be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the Commander, Western Division, Naval Facilities Engineering Command, P.O. Box 727, Attn: Code 1833, San Bruno, CA 94066-0720. All written statements must be postmarked by August 6, 1990, to become part of the official record.

Dated: June 28, 1990.

Jane M. Virga, LT, JAGC, USNR,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-15428 Filed 7-2-90; 8:45 am]

BILLING CODE 3810-AE-M

Notice of Public Hearing for the Draft Environmental Impact Statement for Proposed Trestle Replacement at Naval Weapons Station Earle, Colts Neck, NJ

Pursuant to Council on Environmental Quality regulations (40 CFR part 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed trestle replacement at Naval Weapons Station (WPNSTA) Earle, Colts Neck, New Jersey.

The physical condition of the existing pier and trestle complex at WPNSTA Earle has deteriorated, causing safety and operational concerns. As a result of the trestle's condition, the Navy has mandated reductions in ordinance loads and activities in order to maintain safe operations. The following alternatives to restore full operational capability have been analyzed: repair of the existing trestle; construction of a replacement trestle within the existing footprint; and, construction of a replacement trestle in a new alignment outside the existing trestle footprint.

The preferred alternative site is to construct a new trestle west of the existing trestle. The new trestle will carry two rail lines, two traffic lanes, and utility lines. Most of the trestle length can be constructed from the sea using barge-mounted equipment; however, a section from the mainland to -4 feet mean low water will require land-based construction or dredging to allow barge access. The preferred construction method is to construct the trestle without the use of dredging. The existing trestle would be left in place.

Impacts associated with the preferred alternative of trestle construction without dredging include loss of benthic habitat and organisms located at piling sites, and an increase in shaded bay area. The increase of hard substrate resulting from new pilings will have a long-term beneficial impact for sessile organisms and for fish as a result of increased protected habitat. Short-term impacts from construction operations include an increase in traffic and associated noise and air quality impacts.

The DEIS has been distributed to various federal, state, local agencies, local elected officials, interest groups and the media. The DEIS has also been distributed to the following local libraries:

Atlantic Highlands Public Library, 100 Forest Avenue, Atlantic Highlands, NJ 07716.
Middletown Township Library, 55 New Monmouth Road, Middletown, NJ 07748
Colts Neck Library, Heyers Mill Road, Colts Neck, NJ 07722,
Keyport Free Public Library, Broad Street, Keyport, NJ 07735,
Monmouth Beach Library, 18 Willow Avenue, Monmouth Beach, NJ 07750,
Union Beach Library, 810 Union Avenue, Union Beach, NJ 07735.

A limited number of single copies are available at the address listed at the end of this announcement.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on July 30, 1990, from 7 pm to 10 pm in the auditorium of Middletown Township High School North located at 63 Tindall Road in Middletown, New Jersey.

The public hearing will be jointly conducted by the U.S. Navy and the U.S. Army Corps of Engineers. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record all statements should be submitted in writing. All statements, both oral and written, will become part of the public record of this study. Equal weight shall be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the Commanding Officer, Northern Division, Naval Facilities Engineering Command, Bldg. 77L, Attn: Code 202.2, Naval Base, Philadelphia, PA 19112–5000. All written statements must be postmarked by August 13, 1990, to become part of the official record.

Dated: June 28, 1990.

Jane M. Virga, LT, JAGC, USNR

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–15427 Filed 7–2–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 2, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: June 27, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Client Assistance Program (CAP) Report.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 56.
Burden Hours: 224.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State agencies to apply for funds under the Client Assistance Program. The Department uses the information to make grant awards.

Office of Elementary and Secordary Education

Type of Review: New.
Title: Follow Through Program Final Report Form.
Frequency: One time.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 63.
Burden Hours: 1260.
Recordkeeping Burden:
Recorkkeepers: 0.
Burden Hours: 0.
Abstract: This form is needed to report project accomplishments and student achievements over a 3-year period. The Department will use the information to assess the impact of the program and for future planning.

[FR Doc. 90-15362 Filed 7-2-90; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 2, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: June 27, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Management

Type of Review: New.
Title: Application for the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes.
Frequency: On occasion.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 12.
Burden Hours: 264.
Recordkeeping Burden:
Recordkeepers: 12.
Burden Hours: 48.
Abstract: The Department uses the information collected to determine if an applicant is eligible and able to purchase property for educational purposes and to determine compliance with the terms and conditions of the transfer after the sale.

Office of Planning, Budget, and Evaluation

Type of Review: New.
Title: Observations of Preschool Education for Disadvantaged Children.
Frequency: One time.
Affected Public: State or local government; Small businesses or organizations.
Reporting Burden:
Responses: 1550.
Burden Hours: 438.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this study is to provide in-depth descriptions of the diversity of early childhood experiences available to disadvantaged preschoolers. Data will help improve services to disadvantaged preschoolers by informing legislators, policy makers, and early childhood educators about these experiences.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Application for Grants Under Disability and Rehabilitation Research.
Frequency: On occasion.
Affected Public: Individuals or households; State or local governments; businesses or other for profit; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 800.
Burden Hours: 16000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State agencies to apply for funding under the Disability and Rehabilitation Research Program. The Department uses the information to make grant awards.

[FR Doc. 90-15430 Filed 7-2-90; 8:45 am]

BILLING CODE 4000-01-M

Intent to Compromise a Claim; Minnesota Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Minnesota Department of Education now pending before the Office of

Administrative Law Judges (OALJ), Docket No. 89–54–R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before August 17, 1990.

ADDRESSES: Comments should be addressed to John R. Mason, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., (room 4091, FOB–6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from a limited review of the operation of programs by the Minnesota Department of Education during the period July 1, 1985 through April 23, 1987. This review was performed by the Department's Office of Inspector General on the basis of a complaint that Federal adult education funds had been misused. Under the Adult Education Act (20 U.S.C. 1201 *et seq.*), the Department provides financial assistance to States to expand educational opportunities for adults and to encourage the establishment of programs of adult education.

During the course of their review, the auditors found that $79,513 had been improperly charged to the Adult Education Act in connection with the Duluth Indian Education Office of the Minnesota Department of Education. This amount included $5,728 related to an erroneous cost transfer to an office in St. Paul and $73,785 related to activities that took place in Duluth.

Based on the auditors' findings, the Assistant Secretary for Vocational and Adult Education (Assistant Secretary) notified the State in a program determination letter (PDL) dated September 29, 1989, that it had to repay $79,513 in misused adult education funds. With respect to the $73,785 expended in Duluth, the PDL found violations of: (1) 34 CFR part 74, appendix C, part B.10.b. (1987), which requires that salaries and wages of employees chargeable to more than one program be supported by appropriate time distribution records; (2) assurances given in Minnesota's State Plan for adult education regarding a limit on funds spent for administrative costs; and (3) 34 CFR 426.32(b) (1987), which requires consultation with appropriate local educational agencies (LEAs) whenever an entity other than an LEA is applying to the State for funds. The PDL also sustained the auditors' findings regarding the $5,728 erroneously transferred to the office in St. Paul.

The State appealed $62,492 of the Assistant Secretary's determinations to the OALJ. The State did not contest that $17,021 had been misexpended: this amount included $11,293 expended in Duluth and the $5,728 transferred to St. Paul. The State has repaid to the Department the $17,021. The State's action thus reduced the amount in controversy from $79,513 to $62,492.

The Department proposes to compromise the $62,482 remaining in its claim for $31,246. Together with the $17,021 that the State has previously repaid, the State would be submitting payment to the Department of a total of $48,267.

The State has agreed to keep proper time distribution records, classify costs properly, and observe appropriate procedures in transferring funds to the Duluth office. Given these factors, documentation submitted by the State as part of its appeal, the percentage of the claim to be repaid, and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that the practices that resulted in the claim have been corrected and will not recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to John R. Mason, Esq., at the address given at the beginning of the notice.

Dated: June 27, 1990.

(Catalog of Federal Domestic Assistance No. 84.002)

Thomas E. Anfinson,

Deputy Under Secretary for Management.

[FR Doc. 90–15363 Filed 7–2–90; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.128A]

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps—Statewide Demonstration Projects; Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: This program provides grants to stimulate the development and provision of supported employment services on a statewide basis for individuals with severe handicaps.

Deadline for Transmittal of Applications: September 14, 1990.

Deadline for Intergovernmental Review: November 13, 1990.

Applications Available: July 12, 1990.

Available Funds: $7,622,000.

Estimated Average Range of Awards: $430,000 to $460,000.

Estimated Average Size of Awards: $448,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR part 380.

Priority: The Secretary is particularly interested in applications that propose to make statewide systems changes in States not served by a previous grant under this program. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

FOR APPLICATIONS OR INFORMATION CONTACT: RoseAnn Godfrey, Office of Program Operations, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (room 3225 Switzer Building,) Washington, DC 20202–2574. Telephone: (202) 732–1319.

Authority: 29 U.S.C. 777a(d).

Dated: June 28, 1990.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90–15432 Filed 7–2–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to University of Missouri

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1), under Grant Number DE–FG01–90CE15466, to the University of Missouri, for development of a coal-log pipeline system with a total estimated development cost of $79,512 to be provided by DOE.

PROJECT SCOPE: The grant will provide funding for the University of Missouri to perform conceptional research in the area of coal-log production, for development of a prototype coal-log pipeline model, and for the performance of an economic analysis of the developed system. The proposed coal-log pipeline system is an unique innovative process which proposes

mixing crushed coal with a binder to form coal-logs that could be transported in pressurized water filled pipelines to conventional boilers. This coal-log process is anticipated to result in a definite improvement over current technology and potentially will result in an economically feasible process that could better utilize our national energy resources.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the University of Missouri, an institution with high qualifications in this specialized field of technology. The University will be the licensor of this invention. When the invention is available for demonstration the university will lease or sell the system to restricted companies.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Stanley T. Colt, PR-541, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1424.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-15370 Filed 7-2-90; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

Proposed Rate Adjustment for Eklutna Project; Alaska

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of proposed rate adjustment for Eklutna Project, notice of public forum and opportunity for review and comment.

SUMMARY: Alaska Power Administration (APA) is proposing to adjust the rates for the Eklutna Project. Rates of 19 mills per kilowatt-hour for firm energy, 10 mills per kilowatt-hour for non-firm energy and .3 mills per kilowatt-hour for wheeling expired September 30, 1989. These rates were extended on a temporary basis by the Deputy Secretary of Energy for one year to September 30, 1990. APA proposes to lower the rate for firm energy to 17 mills per kilowatt-hour beginning October 1, 1990 for a period of up to three years. Rates for non-firm energy and wheeling would remain the same. APA will finalize the proposal giving full consideration to comments received. The final proposal may differ from the present. The proposed rates will be submitted to the Deputy Secretary of Energy for interim approval and to the Federal Energy Regulatory Commission for review and final approval.

DATES: Written comments will be considered until August 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, P.O. Box 020050, Juneau, AK 99802, (907) 586-7405.

SUPPLEMENTARY INFORMATION: The proposed rates apply for power sold from the Eklutna Hydroelectric Project to three electric utilities serving the Anchorage and Matanuska Valley areas of Alaska.

Details of the proposed rates, including supporting studies, are available for inspection at APA headquarters, Room 825 Federal Building, Juneau, Alaska; and the Eklutna Project office, Mile 4.0, Old Glenn Highway, Palmer, Alaska.

A public information and comment forum is scheduled to be held August 9, 1990, at 7:00 p.m., in the public conference room of the Loussac Library, 3600 Denali, Anchorage, Alaska.

Authorities for the proposed rate action are the Eklutna Project Act of July 31, 1950 (64 Stat. 382), as amended) and the Department of Energy Organization Act (Pub. L. 95-91). Alaska Power Administration is developing these rates in accordance with DOE financial reporting policies, procedures and methodology (DOE Order No. RA 6120.2 (September 20, 1979), and the procedures for public participation in rate adjustments found at 10 CFR part 903 (1987) as amended.

The present rates went into effect in October 1984. Since that time, better than expected revenues, lower than anticipated expenses and lower interest rates for replacement investments permit consideration of a rate reduction while continuing to meet repayment criteria required under present law.

Given the age of the Eklutna Project, APA expects sizeable replacement costs over the next several years. These costs have been included in the repayment study supporting the proposed rates.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture will be forwarded for Congressional consideration soon. This proposed rate action continues present rate policies under existing law.

Environmental Impact

The proposed rate action will have no significant environmental impact within the meaning of the National Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Issued at Juneau, Alaska, June 28, 1990.

Rodney L. Adelman,

Director, Washington Liaison Office.

[FR Doc. 90-15371 Filed 7-2-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-453-000, et al.]

Tucson Electric Power Co. et al.; Elecric Rate, Small Power Production, and Interlocking Directorate Filings

June 26, 1990.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Company

[Docket No. ER90-453-000]

Take notice that on June 13, 1990, Tucson Electric Power Company (Tucson) tendered for filing a Short-term Power Sale Agreement (the Agreement) between Tucson and Arizona Power Pooling Association, Inc. (APPA). The primary purpose of the Agreement is to provide the terms and conditions relating to the sale of capacity and associated energy by Tucson and the purchase of such capacity and associated energy by APPA between June 1, 1990 and November 3, 1990.

The parties request an effective date of June 1, 1990, and therefore request waiver of the Commission's notice regulations regarding filing.

Tucson states that copies of the filing were served upon APPA.

Comment date: July 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Maine Electric Power Company

[Docket No. ER90-370-000]

Take notice that on June 20, 1990, Maine Electric Power Company (MEPCO), tendered for filing the following:

1. Amendment No. 1 dated June 15, 1990 to Transmission Contract between Massachusetts Municipal Wholesale Electric Company and Maine Electric Power Company.

MEPCO has requested waiver of the Commission's notice and filing requirements to the extent necessary to permit the Amendment to be effective as of October 31, 1990.

MEPCO has served copies of the filing on the affected customers and on the Maine Public Utilities Commission.

Comment date: July 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Cincinnati Gas & Electric Company

[Docket No. ER89-17-001]

Take notice that on May 25, 1990, Cincinnati Gas & Electric Company tendered for filing its Compliance Refund Report.

Comment date: July 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Century Power Corporation

[Docket No. ER90-461-000]

Take notice that on June 20, 1990, Century Power Corporation (Century) tendered for filing an executed copy of its 1990-1992 Power Sales Agreement with Nevada Power Company (Nevada). In all material respects, the executed document reflects the same contractual undertakings as were previously memorialized in a series of correspondence between the parties which were filed in Docket No. ER90-251-000. Those correspondence were accepted for filing and made effective as of January 1, 1990, by order issued April 19, 1990.

Century requests that the current filing be substituted for the earlier submittals in Docket No. ER90-251-000, with the same January 1, 1990 effective date. Copies of Century's submittal have been served on Nevada and on the Nevada Public Service Commission.

Comment date: July 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Gulf States Utilities Company

[Docket No. ER90-457-000]

Take notice that on June 18, 1990, Gulf States Utilities Company (Gulf States) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving Gulf States' application for membership in the WSPP.

Gulf States requests an effective date of June 15, 1990, Gulf States requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's regulations.

Comment date: July 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER90-459-000]

Take notice that on June 20, 1990, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 to the McNeal Mutual Standby Transmission Service Agreement between Sulphur Springs Valley Electronic Cooperative, Inc. (SSVEC), Arizona Electric Power Cooperative, Inc. (AEPCO) and APS. This amendment provides for the renewal of the Agreement in order for the parties to continue to enhance the reliability of electronic service in this part of Southeastern Arizona.

Waiver of notice requirements is requested by the parties in order for this amendment to become effective on February 20, 1990.

There are no charges associated with service under the Agreement.

Copies of this filing have been served on SSVEC, AEPCO, and the Arizona Corporation Commission.

Comment date: July 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15357 Filed 7-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1916-002 et al.]

Transcontinental Gas Pipe Line Corp. et al.; Natural Gas Certificate Filings

June 26, 1990.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1916-002]

Take notice that on June 22, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP89-1916-002, pursuant to section 7(c) of the National Gas Act, to extend and amend the certificate of public convenience and necessity issued in Docket No. CP89-1916-000 on September 29, 1990, *Transcontinental Gas Pipe Line Corporation*, 48 FERC ¶ 61,399 (1989), which allowed Transco to assign to its customers its firm transportation rights on consenting upstream pipeline systems, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transco states that the instant application is being filed as part of the Stipulation and Agreement filed on June 22, 1990 in *Transcontinental Gas Pipe Line Corporation*, Docket No. RP87-7-000, *et al.* Transco states that proposed amendment to the upstream capacity assignment program provides for (i) an extension of the term of the authority granted in Docket No. CP89-1916-000 to be coextensive with the remaining effective period of Transco's Docket No. RP90-8-000 rates, (ii) the inclusion of additional pipelines which consent to the capacity assignment program, and (iii) authority for Transco to charge up to 100% load factor rates to shippers utilizing Transco's firm capacity on consenting pipelines associated with the transportation of gas produced at the Great Plains Coal Gasification Plant (Great Plains), subject to Transco's crediting to non-gas demand charges under it Interim Firm Service IFS service 50% of such revenues which exceed Transco's actual variable, volumetric, or commodity charges incurred on behalf of shippers on Great Plains-related upstream pipelines.

Comment date: July 12, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP84-146-007 and CP84-336-005]

Take notice that on June 22, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an amendment in Docket Nos. CP84-146-007 and CP84-336-005, pursuant to section 7(c) of the Natural Gas Act, to amend the certificates of public convenience and necessity issued in Docket No. CP84-146 on June 18, 1984, *Transcontinental Gas Pipe Line Corporation*, 27 FERC ¶ 61,426 (1984), and in Docket No. CP84-336 on October 3, 1984, *Transcontinental Gas Pipe Line Corporation*, 29 FERC ¶ 61,033 (1984), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transco states that the above certificates authorized Transco to transport on a firm basis certain quantities of natural gas for customers under Rate Schedules X-265 through X-278 and X-284. Transco states that the instant application to amend is being

filed as part of the Stipulation and Agreement filed on June 22, 1990 in *Transcontinental Gas Pipe Line Corporation*, Docket No. RP87–7–000, *et al.* Transco states that it seeks to amend the certificates to remove any restrictions on the sources of gas supply currently authorized to be transported pursuant to the reference rate schedules.

Comment date: July 12, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Company

[Docket Nos. CP90–1575–000, CP90–1576–000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests purusant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the intitation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper	Peak day average annual [2]	Points of receipt	Points of delivery	Start up date (rate schedule)	Related dockets [3]
CP90–1575–000 (6–19–90).	Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563.	End Users Supply System.	30,000 15,000 5,475,000	TX, LA, MS, AL	MS	4–26–90 (IT)	CP88–316–000, ST90–3021.
CP90–1576–000 (6–19–90).	Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563.	Tejas Power Corporation.	30,000 30,000 10,950,000	TX, LA, MS, AL	MS	4–24–90 (IT)	CP88–316–000, ST90–3020.

[2] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–15358 Filed 7–2–90; 8:45 a.m.]

BILLING CODE 6717–01–M

[1] These prior notice requests are not consolidated.

Office of Hearings and Appeals Week of May 18 Through May 25, 1990

Cases Filed During Week of May 18 Through May 25, 1990

During the Week of May 18 through May 25, 1990, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Offce of Hearings

and Appeals of th Department of Energy. This Notice includes a submission that was inadvertently omitted from an earlier list.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the appliction within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of May 18 through May 25, 1990]

Date	Name and location of applicant	Case No.	Type of submission
May 21, 1990	Gulf/Kirk Brown's Gulf, Charlotte, North Carolina	RR300-11	Request for modification rescission in the Gulf Refund Proceeding. If granted: The May 1, 1990 Decision and Order (RR300-7) issued to Kirk Brown's Gulf would be modified regarding the firm's Application for Refund submitted in the Gulf refund proceeding.
Do	Lloyd R. Makey, Idaho Falls, Idaho	LFA-0042	Appeal of a Privacy Act Denial. If granted: The May 8, 1990 Privacy Act Request Denial issued by the Idaho Operations Office would be rescinded, and Lloyd R. Makey would be granted the removal of two security infractions from the personnel security files maintained by the Department of Energy.
Do	Texaco/Four Seasons Texaco, Charlotte, North Carolina.	RR321-2	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The May 11, 1990 Decision and Order (Case No. RF321-3291) issued to Four Seasons Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Gene's Texaco, Collinsville, Illinois	RR321-3	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The May 11, 1990 Decision and Order (Case No. RF321-3590) issued to Gene's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Do	Texaco/Sam Bodie & Sons Texaco, North Augusta, South Carolina.	RR321-4	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The May 4, 190 Decision and Order (Case No. RF321-470 & RF321-3256) issued to Sam Bodie & Sons Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
Do	Thriftway Company, Corpus Christi, Texas	LEE-0015	Exception from the Entitlements Program. If granted: Thriftway Company would receive an exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements purchase obligations.
May 22, 1990	Kenneth Walker, Abilene, Texas	LRZ-0006	Interlocutory. If granted: The Office of Hearings and Appeals would dismiss the Proposed Remedial Order issued jointly to Southwestern States Marketing Corporation and Kenneth Walker only as to Mr. Walker.
May 24, 1990	Professor Gary Milhollin, Washington, D.C.	LFA-0044	Appeal of an Information request denial. If granted: Professor Gary Milhollin would receive access to certain information before the Subgroup on Nuclear Export Coordination in response to his January 3, 1990 and April 26, 1990 Freedom of Information Requests.
Do	Texaco/Jamison Texaco, Oklahoma City, Oklahoma	RR321-5	Request for modification/rescission in the Texaco proceeding. If granted: The May 11, 1990 Decision and Order (Case No. RF321-1091 & RF321-1636) issued to Jamison Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco refund proceeding.
May 25, 1990	American Federation of Government Employees, Local 3824, Golden, Colorado.	LFA-0043	Appeal of an information request denial. If granted: The April 19, 1990, Freedom of Information Request Denial issued by the Assistant Administrator for Management, Western Area Power Administration, would be rescinded, and the American Federation of Government Employees Local 3824 would receive access to the report prepared by Dennis Lenz, Assistant to the Assistant Administrator for Management, Western Area Power Administration, concerning the review of the Fernandez & Associates contract.
Do	American Federation of Government Employees, Local 3824, Golden, Colorado.	LFA-0046	Appeal of an information request denial. If granted: The May 3, 1990, Freedom of Information Request Denial issued by the Assistant Administrator for Management, Western Area Power Administration, would be rescinded, and the American Federation of Government Employees Local 3824 would receive access to position descriptions of certain individuals.
Do	Amoco I & II/Louisiana, Baton Rouge, Louisiana	RQ21-554 & RQ251-555	Second stage refund application. If granted: The State of Louisiana would be permitted to use $425,300 in Amoco consent order funds for two energy conservation programs designed to make restitution to industrial and commercial end-users who were injured by oil overcharges during the price control period.
Do	Cowles Publishing Company, Spokane, Washington	LFA-0045	Appeal of an information request denial. If granted: The April 26, 1990 Freedom of Information Request Denial issued by the Acting Director, Executive Secretariat, would be rescinded, and Cowles Publishing Company would receive access to the deleted names and addresses in the "Medicine, Health and Safety Claims" folder stored in Box 3356 in the Division of Biology and Medicine Files.

REFUND APPLICATIONS RECEIVED WEEK OF MAY 18 TO MAY 25, 1990

Date received	Name of refund proceeding/name of refund applicant	Case No.
05/21/90	Bellig's Spur	RF309-1404.
05/21/90	Toms Siera Co., Inc.	RF307-10123.
05/21/90	W.H. Long's Gulf	RF300-11133.
05/21/90	Saturn Petroleum Co.	RF304-11838
05/21/90	Eastern Freight Ways, Inc.	RF304-11839.
05/21/90	Buno's Kenmore ARCO.	RF304-11840.
05/21/90	Wayside Mkt	RF304-11841.
05/21/90	Maverick Mgmt	RF272-78627.
05/22/90	Don Adams Oil Co., Inc.	RF304-11842.
05/22/90	Saunders Oil Co	RF304-11843.
04/11/90	American Can Co	RF307-10124.
05/21/90	Beauty Labs, Inc	RF272-78628.
05/21/90	Mrs. Robert R. Friedersdorf.	RF272-78629.
05/21/90	David L. Friedersdorf.	RF272-78630.
05/21/90	Leo R. Geyman	RF272-7878631.

REFUND APPLICATIONS RECEIVED WEEK OF MAY 18 TO MAY 25, 1990—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
05/18/90 thru 05/25/90.	Texaco Oil Refund Applications Received.	RF321-5477 thru RF321-5741.
05/18/90 thru 05/25/90.	Gulf Oil Refund Applications Received.	RF300-11132 thru RF300-11138.
05/18/90 thru 05/25/90.	Shell Oil Refund Applications Received.	RF315-9963 thru RF315-9975.

[FR Doc. 90-15372 Filed 7-2-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed During the Week of June 8 Through June 15, 1990

During the week of June 8 through June 15, 1990, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 8 through June 15, 1990]

Date received	Name and location of applicant	Case No.	Type of submission
June 12, 1990	Texaco/Ciruli Oil Company, Hardin, Kentucky	RR321-11	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The May 11, 1990 Decision and Order (Case No. RF321-67 and RF321-115) would be modified regarding the firm's application submitted in the Texaco refund proceeding.
June 13, 1990	Seehuus Associates, Oak Ridge, Tennessee	LFA-0051	Appeal of an information request denial. If granted: Seehuus Associates would receive access to a complete copy of an unclassified contract under the Freedom of Information Act.
June 14, 1990	Standard Oil/Indiana, Indianapolis, Indiana	RM21-210	Request for modification/rescission in the Standard Oil Refund Proceeding. If granted: The June 4, 1985 Decision and Order (Case No. RQ21-165) issued to Indiana would be modified regarding the state's application submitted in the Standard Oil Second-Stage refund proceeding.
Do	Texaco/Holiday Inn Texaco, Madison Heights, Virginia.	RR321-12	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The June 6, 1990 Decision and Order (Case No. RF321-2895 and RF321-4531) issued to Holiday Inn Texaco would be modified regarding the firm's application submitted in the Texaco refund proceeding.

Date received	Name of refund proceeding/name of refund applicaton	Case No.
6/30/88	Super Food Services, Inc.	RF272-78645.
6/8/90	John Royster	RF272-78643.
6/8/90	Charles B. Wise	RF272-78644.
6/8/90 thru 6/15/90.	Texaco Inc. Refund Applications Received.	RF321-6562 thru RF321-6871.
6/11/90	Vickers/ Oklahoma.	RQ-556.
6/11/90	Standard Oil/ Oklahoma, Belridge Oil Co./Oklahoma.	RM 21-204, RM8-205.
6/11/90	Palo Pinto/ Oklahoma, Standard Oil/ Oklahoma.	RM5-206, RM251-207.

Date received	Name of refund proceeding/name of refund applicaton	Case No.
6/11/90	Vickers Energy/ Oklahoma.	RM1-208, RM13-209.
6/11/90	Salem Suede, Inc	RF272-78641.
6/11/90	Bannock Coal Co	RF272-78642.
6/11/90	Dyle Enterprises, Inc.	RF315-9991.
6/12/90	Carlan Enterprises, Inc.	RF315-9992.
6/12/90	Flame Gas Co	RF225-11094.

[FR Doc. 90-15373 Filed 7-2-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL 3695-1]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reallotment of funds under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR part 35, subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1988 construction grant funds

subject to reallotment after September 30, 1989, under section 205 of the Clean Water Act, 33 U.S.C. 1285, and the reallotment of FY 1982 funds set aside to fund an interceptor sewer for the New York City Convention Center under Public Law No. 97–216. The procedures by which the reallotment distributions were determined are also explained.

The construction grants program operates under authority of the Clean Water Act (the Act), Public Law No. 92–500, as amended. Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of their availability "* * * shall be immediately reallotted by the Administrator. * * *" This notice advises the public of the reallotted FY 1988 amounts to be made available to the eligible States. A portion of the FY 1988 funds, totalling $1,000,000, will be made available to the National Small Flows Clearinghouse as required under section 104(g) of the Act as amended by Public Law No. 100–4. In additon, FY 1982 funds allocated to the New York City Convention Center prior to the national distribution of those FY 1982 funds are being reallotted. Funds being reallotted to participating States are added to their allotments for grants for the construction of municipal wastewater treatment facilities. Under section 205(d), these funds are available for obligation until September 30, 1991.

DATES: July 3, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382–5858.

SUPPLEMENTARY INFORMATION: Sums allotted to a State under section 205 of the Act remain available for obligation during the fiscal year in which appropriated and the following 12 months (40 CFR 35.2010[b]). Funds not obligated at the end of this period of availability are reallotted under section 205(d) to the States which fully obligated their allotments, after funds are made available to the National Small Flows Clearinghouse as required in section 104(g) of the Act. Section 104(g) requires the Administrator to make available to the Small Flows Clearinghouse, from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. In Public Law No. 100–202, Congress appropriated a total of $2.304 billion for FY 1988 funding of the construction grants program. At the close of the availability period for the FY 1988 allotment (September 30, 1989), 10 States and Territories had not obligated $2,698,150 of the $2.304 billion available in FY 1988 allotments. The $2,698,150 consists of funds reserved under section 205(i) and section 205(h) for innovative and alternative projects and small communities.

As explained below, not all of the unobligated funds remaining after the period of availability are subject to reallotment under section 205(d), as modified by section 104(g). Due to the following exception for the Northern Mariana Islands, the total amount reallotted is $2,451,171.

Northern Mariana Island

Section 3(b)(2) of Pub. L. No. 95–348 provides that any funds made available to the Northern Mariana Island (NMI) by the Congress after March 24, 1976 "* * * are hereby authorized to remain available until expended." Accordingly, construction grant funds allotted to the NMI which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Because the NMI would have lost $246,979 to reallotment without this statutory provision, section 205(d) prevents the NMI from receiving any funds reallotted from other States.

Interceptor Sewer for New York City Convention Center

In 1981, Public Law No. 97–117 amended the Act by adding a subsection (k) to section 205. Subsection (k) provided for an additional allotment within the FY 1982 appropriation to fund construction of an interceptor sewer for the New York City Convention Center. Public Law No. 97–216 (Urgent FY 1982 Supplemental Appropriation Act) provided that one-third of that project's costs be allocated prior to the national distribution of that appropriation. The funds set aside for the interceptor sewer for the New York City Convention Center were not needed for the project and are therefore being reallotted to the States. The estimated total costs of the project at the time were $2,799,000. The remaining two-thirds of the cost was to be divided evenly between New York's and New Jersey's regular allotments. The $933,000 set aside from each of New York's and New Jersey's FY 1982 allotments, totalling $1,866,000, are now available for their use.

Reallotment Procedure; FY 1988 Funds

To distribute the $2,451,171 that are subject to reallotment in accordance with the requirements of sections 205(d) and 104(g) of the Act, the following procedures were used:

1. The sum of $1,000,000 was subtracted from the total subject to reallotment. This amount is being made available to the Small Flows Clearinghouse and reduce the amount for reallotment to the participating States to $1,451,171.

2. The State allotment shares listed in section 205(c)(3) of the Act were adjusted to reflect the absence of States which did not fully obligate their funds (40 CFR 35.2010[b]).

3. The resulting allotment shares were then applied to the $1,451,171 to arrive at each participating State's reallotment amount. The resulting figures (rounded to the nearest $10, except for New York which is used as the balancing factor) are listed in the table which follows in the column titled "Reallotment Funds FY 1988."

4. The table also identifies the States which did not fully obligate their funds and displays these amounts in the first column titled "Subject to Reallotment FY 1988."

Additional Reallotment; FY 1982 Funds

To reallot the FY 1982 funds of $933,000, the following procedures were used:

1. The FY 1982 State allotment share as published in the September 23, 1983, Federal Register Notice of Allotment (47 FR 42024) was multiplied by $933,000 to derive each State's distribution.

2. The amount for each State was then rounded to the nearest $10 (except for New York which is used as a balancing factor).

3. The distributed amounts are listed in the Attached Table in the column labeled "Total Funds 1982."

Total Reallotment

To derive the Total Reallotment, amounts for each State in the column labeled "Reallotment Funds FY 1988" were added to the State's amounts in the column labeled "Total Funds FY 1982." The total reallotment is shown in the last column labeled "Total Reallotment."

These reallotted funds are available for obligation until September 30, 1991. After that date, unobligated balances will be reallotted under section 205(d) of the Act (40 CFR 35.2010). Grants from these funds may be awarded as of the date the funds are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: June 25, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–15433 Filed 7–2–90; 8:45 am]

BILLING CODE 6560–50–M

[OPP-30304A; FRL 3768-4]

Ciba-Geigy Corp; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Ciba-Geigy Corp., to conditionally register the pesticide product Beacon Herbicide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 18, 1990 (55 FR 14469), which announced that Ciba-Geigy Corporation, Agricultural Div., PO Box 18300, Greensboro, NC 27419, had submitted an application to conditionally register the pesticide product Beacon Herbicide (EPA File Symbol 100-TNL), containing the active ingredient primisulfuron-methyl (3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenylsulfonyl)urea) at 75 percent; an active ingredient not included in any previously registered product.

The application was approved on May 11, 1990, for general use for Beacon Herbicide for selective weed control in field corn (including sweet corn) (EPA Reg. No. 100-705).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of primisulfuron-methyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of primisulfuron-methyl during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This registration has been issued on the condition that the following information is submitted by the listed dates:

1. Information on the relative mobilities of primisulfuron-methyl in soil (EPA Guideline Data 163-1) and its major phenyl and pyrimidine ring-labeled [^{14}C] degradates must be submitted within 12 months from the date of this registration.

2. A new field dissipation study in soil (EPA Guideline Data 164-1) in which residues at the level of 10 percent of the applied rate are measured with the appropriately sensitive methodology. In lieu of a new study, registrant may submit data that characterize the residues detected in the submitted soil dissipation study. This study must be submitted within 27 months from the date of this registration.

3. A small-scale prospective ground-water monitoring study that addresses the mobility of the parent compound and its degradates must be submitted within 30 months from the date of this registration.

4. Aquatic organism testing with a warmwater freshwater fish and a coldwater freshwater fish (EPA Guideline Data 72-1) must be submitted 9 months from the date of this registration.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on primisulfuron-methyl.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the Natural Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2, Arlington, VA 22202 (703-557-4456). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 15, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-15434 Filed 7-2-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30294A; FRL 3768-5]

Ciba-Geigy Corp; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Ciba-Geigy Corp., to conditionally register the pesticide products Rifle Herbicide and CGA 136872 Technical containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of February 14, 1990 (55 FR 5271), which announced that Ciba-Geigy Corporation, Agricultural Div., PO Box

18300, Greensboro, NC 27419, had submitted applications to conditionally register the pesticide products Rifle Herbicide and CGA 136872 Technical (EPA File Symbols 100–TNA and 100–TNT), containing the active ingredient primisulfuron-methyl (3-[4,6-bis-(difluoromethoxy)-pyrimidin-2-yl]-1-(2-methoxycarbonylphenylsulfonyl)urea) at 75 and 95 percent respectively; an active ingredient not included in any previously registered products.

These applications were approved on May 11, 1990, for general use for Rifle Herbicide for nonselective weed control in noncropland areas and selective weed control on certain perennial turf grasses (EPA Reg. No. 100–706) and CGA-136872 Technical for the formulation of other herbicides (EPA Reg. No. 100–707).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of primisulfuron-methyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of primisulfuron-methyl during the period of conditional registration will not cause any unreasonable adverse effects on the environment, and that use of the pesticide is, in the public interest.

These registrations have been issued on the condition that the following information is submitted by the listed dates:

1. Information on the relative mobilities of primisulfuron-methyl in soil (EPA Guideline Data 163–1) and its major phenyl and pyrimidine ring-labeled [^{14}C] degradates must be submitted within 12 months from the date of these registrations.

2. A new field dissipation study in soil (EPA Guideline Data 164–1) in which residues at the level of 10 percent of the applied rate are measured with the appropriately sensitive methodology. In lieu of a new study, registrant may submit data that characterize the residues detected in the submitted soil dissipation study. This study must be submitted within 27 months from the date of these registrations.

3. A small-scale prospective ground-water monitoring study that addresses the mobility of the parent compound and its degradates must be submitted within 30 months from the date of these registrations.

4. Aquatic organism testing with a warmwater freshwater fish and a coldwater freshwater fish (EPA Guideline Data 72–1) must be submitted 9 months from the date of these registrations.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in a Chemical Fact Sheet on primisulfuron-methyl.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the Natural Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2, Arlington, VA 22202 (703–557–4456). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 15, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–15435 Filed 7–2–90; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

June 27, 1990.

A meeting of the Implementation Subcommittee of the Advisory Committe on Advanced Television Service will be held on: July 17, 1990, 10:30 a.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734–2237 or David R. Siddall at (202) 632–7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–15441 Filed 7–2–90; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 28, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this

submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0324
Title: Section 15.233, Operation within the bands 46.60-46.98 MHz and 49.66-50.0 MHz
Action: Extension
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 150 Responses; 150 Hours
Need and Uses: Manufacturers are required to describe the "security" features which prevent unauthorized use of a cordless telephone, in a statement to be carried on the box or carton in which the cordless telephone is marketed. A copy of the description is submitted with the application for equipment authorization to determine that the requirement is met. This requirement is needed in order to alert consumers that their cordless telephone may respond to outside users or spurious signals, resulting in the customer being billed for telephone calls which they did not intend to make.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 90-15440 Filed 7-2-90; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-010806-002
Title: Port of Portland/Stevedoring Services of America, Inc. Terminal Agreement.
Parties: Port of Portland (Port), Stevedoring Services of America (SSA).
Filing Party: Elaine Lycan, Manager, Price Estimating & Regulatory Affairs, P.O. Box 3529, Portland, Oregan 97208.
Synopsis: The Agreement provides for changes in the basic description of the premises used by SSA at the Port's Terminal 2 Facility, a surcharge on containers loaded on liner service cellularized vessels and an increase in the minimum annual Guarantee.

Dated: June 27, 1990.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 90-15342 Filed 7-2-90; 8:45 am]
BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003976-001.
Title: The Puerto Rico Ports Authority/ Sea-Land Service, Inc. Terminal Agreement.
Party: The Puerto Rico Ports Authority, Sea-Land Service, Inc.
Filing Parties: Zulma Perez, Contract Office Coordinator, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936-2829.
Synopsis: The Agreement amends the parties' basic agreement to: (1) provide for two additional 5-year options; (2) revise space rental to $123,072.19 per year, warehouse rental to $105,570 per year, and trailer terminal rental to $1,000 per year; (3) increase the Security for Payment of Rentals and other Charges to $57,410.52; (4) increase the daily penalty for Reasons for Cancellation to $1,913.68; and (5) state the parties' agreement to revise rental payments every three years.

Dated: June 27, 1990.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 90-15343 Filed 7-2-90; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011160-014
Title: Agreement 11160.
Parties:
Atlantic Container Line AB
Compagnie Generale Maritime (CGM)
Orient Overseas Container Line
Hapag Lloyd AG
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen BV
P&O Containers Limited
Polish Ocean Lines
Sea-Land Service, Inc.
Johnson ScanStar
Mediterranean Shipping Co.
Deppe Linie GmBH & Co.

South Atlantic Cargo Shipping NV

Synopsis: The proposed modification would delete Johnson ScanStar as a party to the Agreement, effective September 10, 1990.

By Order of the Federal Maritime Commission.

Dated: June 28, 1990.

FR Doc. 90-15408 Filed 7-2-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Frank T. Bass et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be recieved not later than July 17, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Frank T. Bass,* Whiteville, Tennessee; to acquire an additional 52.0 percent for a total of 71.2 percent of the voting shares of Citizens of Hardeman County Financial Services, Inc., Whiteville, Tennessee, and thereby indirectly acquire The Whiteville Bank, Whiteville, Tennessee.

2. *James S. Simpson,* Middleton, Tennessee; to acquire an additional 16.7 percent for a total of 40.2 percent of the voting shares of First Community Bancshares, Inc., Middleton, Tennessee, and thereby indirectly acquire Bank of Middleton, Middleton, Tennessee.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Shirley W. Nelson,* Walnut Creek, California; to acquire an additional 0.28 percent for a total of 10.81 percent, of the voting shares of Summit Bancshares, Inc., Oakland, California, and thereby indirectly acquire Summit Bank, Oakland, California.

Board of Governors of the Federal Reserve System, June 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15402 Filed 7-2-90; 8:45 am]

BILLING CODE 6210-01-M

First Financial Bancorp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 27, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Financial Bancorp,* Monroe, Ohio; to acquire 97.02 percent of the voting shares of Trustcorp Bank, Hartford City, Indiana.

2. *First Financial Bancorp,* Monroe, Ohio; to acquire 100 percent of the voting shares of Trustcorp Bank, Dunkirk, Dunkirk, Indiana.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Eufaula Bancorp, Inc.,* Eufaula, Alabama; to acquire 100 percent of the voting shares of 1st American Bank of Walton County, Inc., Destin, Florida.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Batesville Bancshares, Inc.,* Batesville, Arkansas; to become a bank holding company by acquiring 95.32 percent of the voting shares of Bank of Evening Shade, Evening Shade, Arkansas.

Board of Governors of the Federal Reserve System, June 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15403 Filed 7-2-90; 8:45 am]

BILLING CODE 6210-01-M

Garfield County Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Garfield County Bancshares, Inc.*, Jordan, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Garfield County Bank, Jordan, Montana.

In connection with this application, Applicant also proposes to acquire Jordan Insurance Agency, Jordan, Montana and thereby engage in general insurance agency activities in a town of less than 5,000 in population pursuant to § 225.25(b)(8)(iii) (A).

Board of Governors of the Federal Reserve System, June 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15404 Filed 7-2-90; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale, Paris, France; Proposal To Act as Futures Commission Merchant in Execution and Clearance of Futures Contracts, and Options on Future Contracts, on Stock and Bond Indexes

Societe Generale, Paris, France ("Sogen") has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("the BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its indirect wholly-owned subsidiary, FIMAT Futures USA, Inc., Chicago, Illinois ("FIMAT"), to engage *de novo* in the execution and clearance of broad-based bond and stock indices future contracts on major commodity exchanges and options thereon, as a futures commission merchant ("FCM"). Sogen proposes that these activities be conducted worldwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or management or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as the require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1337 (D.C. Cir. 1975) ("*National Courier*"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 Federal Register 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Sogen contends that the proposed activities are closely related to banking under the *National Courier* test, and that permitting bank holding companies to engage in the proposed activities would result in increased competition and gains in efficiency. Sogen has applied to act as an FCM in the provision of execution and clearance on the following future contracts and options thereon: (a) Bond Buyer Municipal Bond Index futures contract and options thereon, (b) Financial Times Stock Index futures contract and options thereon, (c) Kansas City Mini Value Line Index futures contract, (d) Kansas City Maxi Value Line Index futures contract, (e) New York Stock Exchange Composite Index futures contract, and options thereon, (f) Nikkei Stock Average futures contract, (g) Standard and Poor's 500 Stock Price Index futures contract and options thereon and (h) Major Market Index futures contracts. The Board has previously approved the execution and clearance of the listed futures contracts and options thereon. *See e.g., BankAmerica Corporation*, 75 Federal Reserve Bulletin 78 (1989); *Nothern Trust Corporation*, 74 Federal Reserve Bulletin 333 (1988); and *Republic New York Corporation*, 73 Federal Reserve Bulletin 224 (1987). Company would conduct its FCM activities in accordance with the limitations of 12 CFR 225.25(b)(18).

In publishing the proposal for comment, the Board does not take any position of issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 20, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 27, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15405 Filed 7-2-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade

Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061190 AND 062290

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
President Enterprises Corp., Wyndham Foods, Inc., Wyndham Foods, Inc	90-1542	06/11/90
American National Insurance Company, Trust under the Will of S.E. McCreless, Deceased, American Securities Life Insurance Company	90-1562	06/11/90
Lyonnaise des Eaux, AMREP Corporation, Albuquerque Utilities Corporation	90-1565	06/11/90
Cyrus Tang, Ronald R. Anderson, G.F. Corporation	90-1624	06/11/90
James R. Leininger, M.D., John H. Firmage, Jr., Medirec	90-1581	06/12/90
James R. Leininger, M.D., Wynton B. Dunford, Medirec	90-1582	06/12/90
First Financial Management Corporation, Frank J. Hanna, Jr. Nationwide Credit, Inc	90-1610	06/12/90
Frank J. Hanna, Jr., First Financial Management Corporation, First Financial Management Corporation	90-1611	06/12/90
John J. Rigas, Tele-Media Company of Southeast Florida, Inc., Tele-Media Company of Southeast Florida, Inc	90-1493	06/13/90
Dusit Thani Corporation Limited, Trusthouse Forte P.L.C., Forte Hotels International, Inc	90-1518	06/13/90
The Sherwin-Williams Company, Borden, Inc., Borden, Inc	90-1521	06/13/90
NYNEX Corporation, Larry A. Dean, Stockholder Systems, Inc	90-1523	06/13/90
Perry Drug Stores, Inc., Acadia Partners, L.P., RDS Detroit, Inc., c/o Reliable Drug Stores, Inc	90-1529	06/13/90
Wolters Kluwer NV, The News Corporation Limited, Harper Properties Corporation	90-1540	06/13/90
Wolters Kluwer NV., TNT Limited, Harper Properties Corporation	90-1541	06/13/90
Wainoco Oil Corporation, Tredegar Industries, Inc., Tredegar Properties, Inc., Tredegar Oil & Gas Corporation	90-1606	06/13/90
Sonat Inc., USX Corporation, TXO Production Corp	90-1614	06/13/90
CS First Boston, Inc., Legend Capital Group, L.P., Long John Silver's Holdings, Inc	90-1619	06/13/90
Ellis & Everard plc, George W. Kramer, Kramer Industries	90-1539	06/14/90
Atlantic Richfield Company, USX Corporation, TXO Production Corp	90-1615	06/14/90
DEKALB Energy Company, Trust U/W of Carl E. Patchin deceased, dtd May 16, 1985, Royal Producing Corp	90-1561	06/15/90
Larry A. Dean, NYNEX Corporation, NYNEX Corporation	90-1566	06/15/90
Burlington Resources, Inc., Union Texas Petroleum Holdings, Inc., Union Producing Company	90-1571	06/15/90
Burlington Resources, Inc., Peter Kiewit Sons', Inc., Unicon Producing Company	90-1572	06/15/90
Maxwell Foundation, Michael Rosenbloom, Globe International Publishing, Inc	90-1576	06/15/90
Memtec Limited, Memtec America Corporation, Memtec America Corporation	90-1589	06/15/90
Iwao Nakajima, Yoshiaki Kubodera, Maui Lu Hotel Resort	90-1625	06/15/90
Torchmark Corporation, Service Corporation International, Family Service Life Insurance Company	90-1629	06/15/90
Simon Trust Partnership No. 3, JMB Income Properties, Ltd.-IX, Lynnhaven Mall Associates	90-1633	06/15/90
Kotobuki Fudosan Ltd., Nippon Shinpan Co., Ltd., Qintex Resorts B.V	90-1634	06/15/90
Manufacturers Hanover Corporation, Midlantic Corporation, Midlantic National Bank & Midlantic Natl. Bank/Delaware	90-1640	06/15/90
Pioneer Electronic Corporation, The Kassar Family Trust, Carolco Pictures Inc	90-1643	06/15/90
Conseco, Inc., Temple-Inland, Inc., LIC Life Insurance Company	90-1655	06/15/90
Columbia Hospital Corporation, HEI Corporation, HEI Corporation	90-1663	06/15/90
Blackstone Capital Partners L.P., Prime Motors, Inns, Inc., Howard Johnson and Ramadalnns Franchise Systems, Inc	90-1664	06/15/90
Edison Brothers Stores, Inc., Kabushiki Kaisha Sega Enterprises, Time-Out Family Amusement Centers, Inc	90-1667	06/15/90
ADC Telecommunications, Inc., Lawrence J. DeGeorge, American Lightwave Systems, Inc	90-1670	06/15/90
Dieter Fuchs, Hanson PLC Baltimore Spica, Inc	90-1644	06/19/90
Westinghouse Electric Corporation, Sunseeds Genetics, Inc., Sunseeds Genetics, Inc	90-1690	06/19/90
Multimedia, Inc., General Electric Company, WKYC-TV, INC., a NBC subsidiary	90-1639	06/20/90
The Carpenters Pension Trust for Southern California, HomeFed Corporation, HomeFed Bank, Federal Savings Bank	90-1689	06/20/90
Dayton Hudson Corporation, B.A.T. Industries p.l.c., Marshall Field & Company	90-1388	06/21/90
Laidlaw Inc., Regional Waste Services, Inc., Regional Waste Services, Inc	90-1631	06/21/90
Merrill Lynch Capital Appreciation Company Limited II, Londontown Holdings Corp., Londontown Holdings Corp	90-1558	06/22/90
Merrill Lynch & Co., Londontown Holdings Corp., Londontown Holdings Corp	90-1559	06/22/90
Merrill Lynch & Co., Inc., Stormy Weather Acquisition, Inc., Stormy Weather Acquisition, Inc	90-1560	06/22/90
BTR plc, Westlake Styrene Corporation, Westlake Styrene Corporation	90-1575	06/22/90
The Exploration Company of Louisiana, Inc., Mr. Edwin L. Cox, Sr., Mr. Edwin L. Cox, Sr	90-1652	06/22/90
The Exploration Company of Louisiana, Inc., Berry R. Cox, Berry R. Cox, Inc	90-1653	06/22/90
Westinghouse Electric Corporation, Windmill Holdings Corp., Zatarain's Inc	90-1654	06/22/90
Charles H. and Margaret M. Dyson, Freeport-McMoRan Inc., Freeport-McMoRan Oil & Gas Co	90-1656	06/22/90
Seagull Energy Corporation, Costain Group PLC, Wacker Oil Inc	90-1674	06/22/90
Burlington Resources Inc., Enron Corp., Enron Oil & Gas company	90-1679	06/22/90
Maruko Inc., Metropolitan Life Insurance Company, Rancho Bernardo Hotel Associates	90-1698	06/22/90
Mr. Patrick G. Ryan, The Halas Family Holding Company, The Chicago Bears Football Club, Inc	90-1679	06/22/90
NAC Re Corp., The Continental Corporation, Harbor Insurance Company	90-1700	06/22/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 90-15420 Filed 7-2-90; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3111]

Money Money Money, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California corporation and its officer, that create and distribute television programs and commercials for various products, from selling, broadcasting, or disseminating the "Government Grants" commercial. The consent agreement also would prohibit respondents from making unsubstantiated claims or from referring to any endorsement, unless it reflects the honest opinion of the endorser, in any future advertisements and from making any commercial that misrepresents that it is an independent program and not a paid commercial. In addition, the consent agreement would require respondents to turn over $175,000 to the FTC to be used, if practical, to establish a consumer redress fund.

DATES: Comments must be received on or before September 4, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of Money Money Money, Inc., a corporation; and Hal Morris, individually and as an officer of Money Money Money, Inc.

The Federal Trade Commission having initiated an investigation of Money Money Money, Inc., a corporation; and Hal Morris, individually and as an officer of Money Money Money, Inc., hereinafter sometimes referred to as proposed respondents; in connection with their participation in the production and dissemination of the "Government Grants" commercial described in the draft of complaint here attached; and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is Hereby Agreed by and between Hal Morris and Money Money Money, Inc., a corporation, by its duly authorized officer, and their attorney, and counsel for the Federal Trade Commission that:

1. a. Money Money Money, Inc., is a California corporation. Its principal office or place of business is at 155 South El Molino, suite 203, Pasadena, CA 91101.

b. Hal Morris is an officer of respondent Money Money Money, Inc. His principal office or place of business is the same as that of the corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondents that they have violated the law as alleged in the draft of complaint here attached or have engaged in any other unlawful conduct. If it is accepted by the Commission, this agreement constitutes a full settlement between the Federal Trade Commission and Money Money Money, Inc. and Hal Morris. As to those activities alleged in the complaint, and which occurred prior to the date of entry of the order, the Federal Trade Commission hereby releases proposed respondents from all further liability for consumer redress or for payment of any penalty, fine, or punitive assessment.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order, "grant" shall mean any money or item of value that is given or awarded without a concomitant obligation to repay or to provide goods or services.

I.

It is ordered that respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an

officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the "Government Grants" commercial described in the complaint.

II.

It is further ordered that respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

A. That there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses.

B. That it is easy for the average consumer to obtain a grant from federal, state, or local governments to start a small business.

C. That the book *How To Start Your Own Business By Doing Business With The Government* consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business.

D. That the Small Business Innovation Research program provides grants to consumers to start small businesses.

E. That federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources.

III.

It is further ordered that respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any direct or implied repesentation concerning:

A. The availability of grants from any source for any purpose;

B. Whether any book or other writing contains information about a particular subject or topic;

C. The terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization;

D. The terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or

E. Any methods or techniques for starting, operating, or financing any profession or business;

unless, at the time of making the repesentation, respondents possess and rely upon competent and reliable evidence that substantiates the representation; provided, however, that whenever respondents represent that any book or other writing contains information about a particular subject or topic, subpart B. shall not be construed to require respondents to possess and rely upon evidence that such information in said book or other writing is true, but only that it is present in said book or other writing.

IV

It is further ordered that respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Using, publishing, or referring to any endorsement (as "endorsement" is defined in section 225(b), part 255, title 16, Code of Federal Regulations) unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by respondents.

B. Representing, directly or my implication, that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

V.

It is further ordered that respondents Money Money Money, Inc., a corporation, its successors and assigns, and its officers; and Hal Morris, individually and as an officer of said corporation; and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising promotion, offering for sale, sale, or distribution of any product or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisment.

B. Any commercial or other advertisement for any such product or service longer than fifteen (15) minutes in length that does not display visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

VI.

It is further ordered that respondents Money Money Money, Inc. and Hal Morris are jointly and severally liable for consumer redress in the amount of one hundred seventy five thousand dollars ($175,000) and shall, within five (5) days of the date that this Order becomes final, deposit the sum of one hundred seventy five thousand dollars ($175,000) into an escrow account established and managed by the Commission. These funds shall be used to provide redress to consumers who were injured by respondents or others in connection with the acts and practices alleged in the complaint, and to pay any attendant costs of administration. The final determination of eligibility for, and amount of, refunds to be paid to consumers shall rest with the

Commission. If the Commission determines that the direct payment of said funds to eligible consumers is wholly or partially impracticable, then, in lieu of making direct consumer redress, the Commission shall cause said funds to be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein described shall be deemed a payment of any fine, penalty, or punitive assessment. It is further determined that there shall be imposed no fine, penalty, or punitive assessment against respondents with respect to the acts and practices which are the subject matter of the complaint and which occurred prior to the date of entry of the order.

VII.

It is further ordered that for three (3) years from the date that the practices to which they pertain are last employed, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements, promotional materials, documents, or other materials covered by this Order;

B. All materials relied on to substantiate any claim or representation covered by this Order;

C. All materials in their possession or control that contradict, qualify, or call into question such representation or the basis on which repondents relied for such representation; and

D. All materials that demonstrate respondents' compliance with this Order.

VIII.

It is further ordered that the respondents shall, for ten (10) years from the date of entry of this Order, distribute a copy of this Order to each present and future managerial employee.

IX.

It is further ordered that respondents shall notify the Commission, at least thirty (30) days prior to the proposed change, of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

X.

It is further ordered that respondent Hal Morris, for a period of ten (10) years from the date of service of this Order, shall promptly notify the Commission, in writing, of his discountinuance of his affiliation with respondent Money Money Money, Inc. or his new affiliation with any other business or employment that engages in any acts or practices covered by any provision of this Order. For each such new affiliation, the notice shall include the name and address of the new business or employment, and a description of respondents duties and responsbilities.

XI.

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Money Money Money, Inc. and Hal Morris.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising for a book about how to obtain government grants to start small businesses. Money Money Money, Inc. is a California corporation. Hal Morris owns and controls the corporation. Money Money Money, Inc. and Hal Morris create and distribute television programs and program-length commercials for various products.

The Commission's complaint in this matter charges Money Money Money, Inc. and Hal Morris with directing and participating in the dissemination of a program-length commercial for a book, *How To Start Your Own Business By Doing Business With The Government*, that contains six false and misleading representations concerning the availability of government grants to start small businesses. The creation and dissemination of the commercial containing the six challenged claims is alleged to be an unfair or deceptive act or practice in violation of section 5(a) of the Federal Trade Commission Act.

Count I of the complaint alleges that Money Money Money, Inc. and Hal Morris represented that there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses. In truth and in fact, the complaint alleges, there is not 33 billion dollars in grants available from federal, state, and local governments to start small businesses.

Count II of the complaint alleges that Money Money Money, Inc. and Hal Morris represented that it is easy for the average consumer to obtain a grant to start virtually any type of small business. According to the complaint, however, it is not easy for the average consumer to obtain government grant money to start virtually any type of small business.

Count III of the complaint alleges that Money Money Money, Inc. and Hal Morris represented that the government grant book consists primarily of information on how average consumers can easily obtain grants from federal, state, and local governments to start virtually any kind of small business. In truth and in fact, the complaint alleges, the government grant book does not consist primarily of information on how average consumers can easily obtain grants from federal, state, and local governments to start virtually any kind of small business.

Count IV of the complaint alleges that Money Money Money, Inc. and Hal Morris represented that the Small Business Innovation Research program provides grants to consumers to start virtually any kind of small business, and that average consumers can obtain a $25,000 grant from the Small Business Innovation Research program to start a small business quickly and easily. According to the complaint, however, the Small Business Innovation Research program does not provide grants to consumers to start virtually any kind of small business, and average consumers cannot obtain a $25,000 grant from the Small Business Innovation Research program to start a small business quickly or easily.

Count V of the complaint alleges that Money Money Money, Inc. and Hal Morris represented that federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources. In truth and in fact, the complaint alleges, federal, state, and local governments do

not provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources. The financial history and resources of the applicants are factors that are considered by the federal, state, and local governments in making grants.

Count VI of the complaint alleges that Money Money Money, Inc. and Hal Morris represented that certain claimed success stories are true and/or illustrate and substantiate that the information provided in the government grant book has been used successfully by average consumers to start small businesses. According to the complaint, however, respondents' claimed success stories are not true and do not illustrate or substantiate that the information provided in the government grant book has been used successfully by average consumers to start small businesses.

The consent order contains provisions designed to remedy the advertising violations charged by preventing Money Money Money, Inc. and Hal Morris from engaging in similar acts and practices in the future. Part I of the order prohibits Money Money Money, Inc. and Hal Morris from selling, broadcasting, disseminating, or assisting or encouraging others to sell, broadcast or disseminate the "Government Grants" commercial described in the complaint.

Part II of the order prohibits Money Money Money, Inc. and Hal Morris from representing, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, that there is 33 billion dollars in grants available from federal, state, and local governments to start small businesses; that it is easy for the average consumers to obtain a grant from federal, state, or local governments to start a small business; that the book *How To Start Your Own Business By Doing Business With The Government* consists primarily of information on how average consumers can obtain grants from federal, state, and local governments to start a small business; that the Small Business Innovation Research program provides grants to consumers to start small businesses; or that federal, state, and local governments provide grants to consumers to start small businesses without regard to the grant applicant's financial history or resources. For purposes of the order, "grant" is defined as any money or item of value that is given or awarded without a concomitant obligation to repay or to provide goods or services.

Part III of the order requires Money Money Money, Inc. or Hal Morris, in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, to possess and rely upon competent and reliable evidence that substantiates any representation concerning the availability of grants from any source for any purpose; whether any book or other writing contains information about a particular subject or topic; the terms or conditions upon which any person, firm, agency, or institution will award a grant to any other person, firm, or organization; the terms or conditions of any government or private business opportunity, business assistance program, grant program, loan program, or procurement program; or any method or techniques for starting, operating, or financing any profession or business. According to the order, subpart B. of part III shall not be construed to require Money Money Money, Inc. or Hal Morris to possess and rely upon competent and reliable evidence that any representations made in the book or other writing are true.

Part IV of the order prohibits Money Money Money, Inc. and Hal Morris from using, publishing, or referring to any endorsement (as "endorsement" is defined in section 255(b), part 255, title 16, Code of Federal Regulations) in connection with the advertising, promotion, offering for sale, sale, or distribution of any product or service, unless respondents have good reason to believe that at the time of such use, publication, or reference, the endorsement reflects the honest opinions, findings, beliefs, or experience of the endorser and contains no representations which would be false or unsubstantiated if made directly by them. Money Money Money, Inc. and Hal Morris also are prohibited from representing that any endorsement of the product or service represents the typical or ordinary experience of members of the public who use the product or service unless such is the case.

Part V of the order prohibits Money Money Money, Inc. and Hal Morris from creating, producing, selling, or disseminating any commercial or other advertisement for any product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement. Money Money Money, Inc. and Hal Morris also must make the following disclosure in any commercial or other advertisement, for any product or service, longer than fifteen (15) minutes in length:

THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE].

This disclosure must be made visually, in a clear and conspicuous manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service.

Part VI of the order requires Money Money Money, Inc. and Hal Morris to pay the sum of one hundred seventy five thousand dollars ($175,000) to a Commission-managed escrow account. These funds are to be used by the Commission to pay redress to consumers injured by the practices challenged in the complaint. If the Commission finds that consumer redress is not practicable, then the funds shall be paid to the United States Treasury in lieu of redress.

Parts VII through XI of the order are standard order provisions requiring Money Money Money, Inc. and Hal Morris to retain records demonstrating their compliance with the order; to distribute the order to their managerial employees; to notify the Commission of any changes in the structure of the corporation or of Morris' new affiliation with businesses that make commercials covered by the order; and to report to the Commission their compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment of the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 90-14521 Filed 7-2-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published bi-monthly (every-other-

month), and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies", sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

Associated Pathologists Laboratories, 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Chem-Bio Corporation, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263

CompuChem Laboratories, Inc., Western Division, 600 West North Market Boulevard, Sacramento, CA 95834, 916-923-0840 (name changed: formerly ChemWest Analytical Laboratories)

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601-236-2609

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205-9998, 205-934-0985

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817-878-5600

HealthCare/Preferred Laboratory, 3011 W. Grand Boulevard, Detroit, MI 48202, 313-875-2112

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961

Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365, 800-331-8670 (name changed: formerly Abused Drug Laboratories)

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203-334-6187

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800-533-1710/507-284-3631

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800-251-0089

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 612-636-7466

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414-257-7439

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309-672-4928

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312-595-3888 ext. 671

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201-769-8500

PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-3537

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303-799-2822

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919-361-7770

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91405, 818-989-2520

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 312-885-2010 (name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (name changed: formerly International Clinical Laboratories)

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219-234-4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405-272-7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314-577-8628

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 90-15480 Filed 7-2-90; 8:45 am]

BILLING CODE 4120-20-M

Centers for Disease Control

Establishment; Hanford Thyroid Morbidity Study Advisory Committee

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services, on June 13, 1990, of the following Federal advisory committee:

Designation: Hanford Thyroid Morbidity Study Advisory Committee.

Purpose: This Committee will provide advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The Committee will review development of study protocol and recommend changes of scientific merit to CDC, advise onthe conduct of a pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the Committee will advise CDC on the design and conduct of the study and analysis of the results.

Authority for this Committee will expire June 13, 1992, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: June 26, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-15399 Filed 7-2-90; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management of Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Social Security Office Report of State Buy-In Problem: *Form Numbers:* HCFA-1957; *Frequency:* On occasion; *Respondents:* State/local governments, individuals/households, and Federal agencies/employees; *Estimated Number of Responses:* 40,000 *Average Hours per Response:* 17.5 minutes; *Total Estimated Burden Hours:* 11,666.

2. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements—Datamatch Employer Reporting Project; *Form Number:* HCFA-R-137; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, small business/organizations, State/local governments, non-profit organizations, and Federal agencies/employees; *Estimated Number of Responses:* 1,100,000; *Average Hours per Response:* 3 hours (reporting) and 10 minutes (recordkeeping); *Total Estimated Burden Hours:* 3,300,000 (reporting) and 183,333 (recordkeeping) for a total of 3,483,333 hours.

4. *Type of Request:* Extension; *Title of Information Collection:* Provider Cost Report Reimbursement Questionnaire; *Form Number:* HCFA-339; *Frequency:* Annually; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 20, 440; *Average Hours per Response:* 20; *Total Estimated Burden Hours:* 408,800.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicaid Quarterly Showing Validation Survey; *Form Number:* HCFA-9050; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 47; *Average Hours per Response:* 16; *Total Estimated Burden Hours:* 752.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building room 3208, Washington, DC 20503.

Dated: June 22, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

FR Doc. 90-15348 Filed 7-2-90; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Advisory Committee on the Food and Drug Administration; Opportunity for Comment on FDA Mission, Responsibilities, and Structure

ACTION: Opportunity for Public Comment.

SUMMARY: The Department of Health and Human Services (HHS) has appointed an Advisory Committee on the Food and Drug Administration (the Committee) to examine the agency's mission, responsibilities, and structure. The Committee, as part of its deliberations process, is seeking written public comment on four central questions relating to FDA's overall mission and whether FDA's energies and resources are focused on the right objectives. The Committee will then analyze these public comments as they apply to the various disciplines and constitutents subject to FDA jurisdiction.

The four questions for public comment are:

1. What is expected of the FDA in the immediate future, and how might those expectations change over a longer term?
2. What is required to meet those expectations, in terms of areas including resources, scientific and technological capabilities, intergovernmental and international relationships, and other needs?
3. What does the FDA currently have available to meet these expectations, and how does the agency use it?
4. What are the roadblocks and problems that limit the FDA's ability to move from the status quo to where it needs to be?

The Committee will address these four central questions in a series of subcommittee meetings beginning in September. One subcommittee will focus on human drugs and biologics issues, a second on foods and animal drugs, and the third on medical devices, radiological products, and biomedical research issues. *Public comments, to the extent possible, should focus on the four questions as they relate to a single product area or scientific discipline; the appropriate subcommittee should then be noted at the top of the document. Comments should be limited to five typed, single-spaced pages where possible.*

The subcommittee meetings will include some opportunity for public participation. Pesons interested in making a brief oral presentation to one or more of the subcommittees should present a formal written request under separate cover.

DATES: Written comments requested by August 2, 1990. Applications to provide brief oral presentation requested under separate cover by August 2, 1990.

ADDRESSES: All responses should be mailed to Eric M. Katz, Executive Director, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, Room 750-G Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human

Services, Room 740–G Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Telephone number (202) 245–7305.

SUPPLEMENTARY INFORMATION: The Committee held its inaugural meeting on May 17–18, examining FDA's activities and responsibilities and setting a work plan for the coming months. Charles C. Edwards, M.D., serves as Chair of this Committee, with fifteen additional members from health-related disciplines in the private sector. In its first meeting, the Committee established three subcommittees to review specific disciplines, products, and constituencies subject to FDA regulation.

One of the three subcommittees will focus on FDA's activities in human drugs and biologics activities, chaired by Dr. David Kessler. A second subcommittee will cover the foods and veterinary medicine areas, led by Mr. Sherwin Gardner. Mr. Frank Samuel will chair the third subcommittee addressing medical devices, radiological products, and biomedical research issues. Each member of the Committee will work on one of these subcommittees, with the Chair of the overall Committee serving as *ex officio* to all three.

The current work plan includes two meetings of each these subcommittees, to allow for public comments by invitation and to enable the subcommittee members to formulate specific findings in the areas of their formal charge. The tentative dates and locations for these meetings are as follows:

Drugs & Biologics:	Sept. 27–28, Washington, DC.
	Nov. 8–9, La Jolla, CA.
Foods & Veterinary Medicine:	Sept. 6–7, Washington, DC.
	Oct. 25, Washington, DC.
Devices, Radiological Products, and Biomedical Reserach:	Oct. 15–16, Washington, DC.
	Nov. 13, Washington, DC.

The final dates and exact locations of these meetings will be published in a future **Federal Register** notice in advance of the meetings. It is expected that these meetings will be open to the public.

In an effort to allow the subcommittees to establish a common theme for their inquiries, the Committee formulated four central questions for each of the subcommittees to use during their deliberations. Each subcommittee will address this uniform list of questions as they apply to the specific scientific disciplines and product areas within the subcommittee's scope of inquiry.

These four central questions, as noted in the summary above, are:

1. What is expected of the FDA in the immediate future, and how might those expectations change over a longer term?
2. What is required to meet those expectations, in terms of areas including resources, scientific and technological capabilities, intergovernmental and international relationships, and other needs?
3. What does the FDA currently have available to meet these expectations, and how does the agency use it?
4. What are the roadblocks and problems that limit the FDA's ability to move from the status quo to where it needs to be?

The purpose of these four questions is to focus the attention of the subcommittee, as well as any comments received from the general public in support of the subcommittees, on questions with cross-cutting impact throughout the agency. Obviously, other topics may arise throughout the course of the year for the consideration of the full committee or the subcommittees.

To allow for adequate public input to the subcommittee process, the Committee invites, through this notice, written public comment regarding these four questions. *Public comments, to the extent possible, should focus on these questions as they relate to a single product area or scientific discipline; the appropriate subcommittee should then be noted at the top of the document. Comments should be limited to five typed, singlespaced pages where possible.*

In addition to reviewing the written comments received, the three subcommittees may invite knowledgeable members of the public to offer brief presentations at their meetings. While these opportunities will be by invitation only, any person may express interest in such an invitation by submitting a letter under separate cover to the Committee. The letter should include both a description of the requestor's qualifications and interests and a summary of the major points likely to be made during such a presentation. Such requests should be submitted by August 2, 1990, in order to allow the Committee adequate time to review the requests and issue invitations as needed.

Dated: June 28, 1990.

Eric M. Katz,

Executive Director, Advisory Committee on the Food and Drug Administration.

[FR Doc. 90–15410 Filed 7–2–90; 8:45 am]

BILLING CODE 4160–17–M

Availability of Technical Report on Toxicology and Carcinogenesis Studies of d-Carvone

The HHS's Nation Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of d-carvone, used as a flavoring agent in beverages, liquors and liqueurs, ice cream and other frozen desserts, baked goods, and candy. It is also used as a fragrance in perfumes, creams and lotions, and detergents.

Toxicology and carcinogenesis studies were conducted by administering to groups of 50 mice of each sex 0, 375 or 750 mg/kg d-carvone in corn oil by gavage, 5 days per week for 103 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity * of d-carvone for male or female B6C3F1 mice.

The study scientist for these studies is Dr. Po C. Chan. Questions or comments about this Technical Report should be directed to Dr. Chan at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–7561.

Copies of Toxicology and Carcinogenesis Studies of d-Carvone in B6C3F1 Mice (Gavage Studies) (TR 381) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 27, 1990.

David R. Rall, M.D., Ph.D.

Director.

[FR Doc. 90–15424 Filed 7–2–90; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Hydroquinone

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

and carcinogenesis studies of hydroquinone, used as an antioxidant in the rubber industry and as a developing agent in photography. It is also an intermediate in the manufacture of rubber and food antioxidants and monomer inhibitors. Hydroquinone and products containing hydroquinone are used as depigmenting agents to lighten skin.

Toxicology and carcinogenesis studies of hydroquinone were conducted by administering 0, 25, or 50 mg/kg by gavage to groups of 55 rats of each sex in deionized water by gavage 5 days per week for 103 weeks. Groups of 55 mice of each sex were administered 0, 50, or 100 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity [1] of hydroquinone for male F344/N rats, as shown by marked increases in tubular cell adenomas of the kidney. There was some evidence of carcinogenic activity of hydroquinone for female F344/N rats, as shown by increases in mononuclear cell leukemia. There was no evidence of carcinogenic activity of hydroquinone for male B6C3F1 mice administered 50 or 100 mg/kg in water by gavage. There was some evidence of carcinogenic activity of hydroquinone for female B6C3F1 mice, as shown by increases in hepatocellular neoplasms, mainly adenomas.

The study scientist for these studies is Dr. Frank W. Kari. Questions or comments about this Technical Report should be directed to Dr. Kari at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–2926.

Copies of Toxicology and Carcinogenesis Studies of Hydroquinone in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 366) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 27, 1990.

David P. Rall,

Director.

[FR Doc. 90–15423 Filed 7–2–90; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Tremolite

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of tremolite, a naturally occurring mineral of the amphibole series. Tremolite may occur in crystalline (nonfibrous) form in nature, but this nonfibrous form may assume fibrous characteristics during processing. This form of asbestos was a common contaminant of the talc used in foods and pharmaceuticals 20 years ago.

Toxicology and carcinogenesis studies of tremolite were conducted by administering this substance to 250 rats of each sex at a concentration of 1% in pelleted diet for the lifetime of the animals.

Under the conditions of these fed studies, tremolite was not overtly toxic or carcinogenic for male or female F344/N rats.

Copies of Toxicology and Carcinogenesis Studies of Tremolite in F344/N Rats (Feed Studies) (TR 277) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: June 27, 1990.

David P. Rall,

Director.

[FR Doc. 90–15425 Filed 7–2–90; 8:45 am]

BILLING CODE 4140–01–M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (29 FR 1654, January 11, 1974, as amended most recently at 55 FR 12742, April 5, 1990) is amended to reflect: 1) Amendments to update the functional statement for the Office of Resource Management, National Institute of Mental Health; and 2) amendments to update the functional statement for the Office of Planning and Resource Management, National Institute on Alcohol Abuse and Alcoholism.

Section HM–B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM), is amended as follows:

Under the heading *Office of Resource Management (HMM15),* following item (f) delete the period and add a semicolon and the following words "and (g) personnel operations."

Under the heading *Office of Planning and Resource Management (HMC15),* following item (c) add the following words "and (d) personnel operations;".

June 25, 1990.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–15411 Filed 7–2–90; 8:45 am]

BILLING CODE 4160–20–M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 55 FR 1098, January 11, 1990) is amended to establish division-level components within the Office for Treatment Improvement (OTI), ADAMHA.

Section HM–B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM), is amended as follows:

After the statement for the *Office for Treatment Improvement (HMAB)* insert the following:

Office of the Director (HMAB1): (1) Provides leadership, direction, and policy in the development of OTI goals, priorities, policies, and programs and serves as the focal point for the Department's efforts for alcohol, drug abuse, and mental health treatment improvement; (2) plans, directs, and provides overall administration of the program and management activities of OTI; (3) conducts program policy planning and review; (4) provides information to the public and constituent organizations on OTI programs; (5) conducts and coordinates interagency, intergovernmental, and international activities of OTI; (6) promotes mainstreaming of alcohol, drug abuse, and mental health treatment into the health care system; and (7) monitors the conduct of the equal employment opportunity activities of OTI.

Division for Treatment Resources Development (HMAB2): (1) Plans, supports, and conducts drug abuse treatment demonstration programs to improve the treatment for critical

populations, the criminal justice system, and targeted geographic areas; (2) evaluates the national demonstration programs; (3) plans, directs, and supports technical assistance to grantees; (4) collaborates with States, communities, health care providers, and national organizations to upgrade and improve the effectiveness and program capacity of drug treatment programs; and (5) provides a focus for addressing the treatment needs of individuals with multiple drug, alcohol, and mental health problems.

Office of Resource Management (HMAB3): (1) Provides or coordinates the provision of administrative management support to the OTI in such areas as: (a) Administrative services, (b) personnel management, (c) information resource management, (d) financial management, and (e) grants and contracts management; (2) develops administrative management policies, procedures, and guidelines for OTI programs and operations; and (3) maintains liaison with the management staffs of the Office of the Administrator, ADAMHA, and implements general management policies within the OTI prescribed by ADAMHA and higher authorities.

Division for State Assistance (HMAB4): (1) Administers the Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant program, including compliance reviews, management reviews, and technical assistance to States, Territories, and Indian Tribes; (2) administers the Mental Health Services to the Homeless (MHSH) Block Grant program; (3) establishes guidance for, collects, analyzes, and provides assistance to strengthen annual State Substance Abuse Services Plans; (4) establishes, coordinates, and monitors agency data policy and implements data activities as they relate to the management of the ADMS and MHSH Block Grant programs; (5) provides for information exchange and technical assistance between ADMAHA and other Government agencies, national organizations, and State and local governments on matters relating to alcohol, drug abuse, and mental health services programs; (6) collaborates with national organizations, States, communities, and substance abuse treatment and other related health and human services providers to upgrade the quality of drug treatment, improve the effectiveness of drug treatment programs, and expand drug treatment capacity; (7) collaborates with the Institutes in the collection of treatment data and in the application of health services research to alcohol, drug abuse, and mental health treatment programs; and (8) collaborates with the Office for Substance Abuse Prevention in the training of health care providers.

Dated: June 26, 1990.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-15412 Filed 7-2-90; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Intergovernmental Advisory Council on Education and its full Council. This notice also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: July 24, 1990.

ADDRESSES: The Crowne Plaza Holiday Inn, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Gwen A Anderson, Executive Director, Intergovernmental Advisory Council on Education, room 3036, 400 Maryland Avenue, SW., Washington, DC 20202-7576, (202) 401-3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

On July 24, the full Council of the Intergovernmental Advisory Council on Education will meet from 1 p.m. to 4:30 p.m. (hours are tentative). Interested parties may call the information contact on July 22 for the exact hours. The meeting is open to the public.

The proposed agenda of the meeting includes discussion of (1) the Council's work plans, (2) critiquing the 1990 symposium, (3) discussions relating to the preparation of a Symposium "discussion guide", (4) a budget review, and administrative issues that are related to the operation of the Council.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue, SW., room 3036, Washington, DC 20202-7576, from the hours of 9 a.m. to 5 p.m.

Dated: June 25, 1990.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 90-15351 Filed 7-2-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-00-4212-15; AZA 23648-02]

Realty Action; Initial Classification of Public Lands for State Indemnity Selection, Arizona

AGENCY: Bureau of Land Management (BLM), DOI.

1. Pursuant to title 43 Code of Federal Regulations (CFR), Subpart 2400; and section 7 of the Act of June 28, 1934; and the Enabling Act of June 20, 1910 (36 Stat. 557) as amended, the public lands described below are hereby classified for State Indemnity Selection.

2. The notice of proposed classification of these lands was published on January 2, 1990 in Vol. 55 No. 1, pages 66 and 67 and was widely publicized. Comments received were supportive and the lands are being classified as proposed.

3. The lands included in this classification are within the following townships, ranges and sections and were legally described in the publication noted above.

Gila and Salt River Meridian

Maricopa County

T. 2 N., R. 5 W., sec. 2.
T. 2 N., R. 6 W., sec. 2.
T. 2 N., R. 7 W., secs. 18, 19, 30, 31, 32.
T. 2 N., R. 8 W., secs. 2, 11, 12, 13, 14, 15, 17, 18, 23, 24, 25.
T. 3 N., R. 5 W., secs. 32, 35, 36.
T. 3 N., R. 6 W., sec. 36.
T. 4 N., R. 4 W., sec. 36.

La Paz County

T. 3 N., R. 15 W., sec. 2.

Pima County

T. 15 S., R. 15 E., sec. 15.

Totaling 11,371.24 acres, more or less.

4. This classification decision is based on disposal criteria of 43 CFR 2400: Pursuant to 43 CFR 2430.2b, the lands

are found to be chiefly valuable for public purposes. The state has filed applications to receive these lands in compensation for land taken by the Bureau of Reclamation for construction of the Central Arizona Project.

5. The following holders of section 3 grazing permits have been given notification in accordance with 43 CFR 4110.4–2(b). Their affected grazing use will be terminated two years from the notification if the lands are transferred to the state. Range improvements are noted after the permittees.

Crowder-Weisser	fence 5482
Hazelton-Herrara	Goose Tank 4405
Frieda Leavell	fence 1402
Janet Pascoe	fence 0126
Charles A. Miccia	fences 0366 and 0686

Threatened and endangered species, mineral potential and cultural resource evaluations have been approved for the subject lands. The state will manage cultural resources under an existing Memorandum of Agreement.

The public land will be conveyed under the following terms and conditions:

1. Subject to rights of record as follows:

American Telephone and Telegraph Company.	PHX 083322.
Arizona Department of Transportation.	AR 031625, AR 031626.
Arizona Game and Fish Department.	719 (White Tank No. 2) and access.
Arizona Public Service Company.	AR 010364, A 7973, A 18946, A 20277.
Arizona Telephone Company.	A 10202.
Burns International, Incorporated.	A 23329.
Joe Krelic	AMC 187660, AMC 187761.
City of Tucson	A 21902.
Maricopa County Flood Control District.	A 11866.
Maricipa County Highway Department.	A 24079, A 23351.
Mountain States Telephone and Telegraph Company.	A 13738
U.S. Sprint Communications Company.	A 22287.
Vicksburg Land Associates.	A 18959.
Bureau of Reclamation.	A 10014, A 19151
Bureau of Land Management.	A 23348
Corps of Engineers	A 8122
Federal Aviation Administration.	A 18421
Southern Pacific Railroad Company.	PHX 086524.

2. Reservations to the United States as follows:

A right-of-way thereof for ditches or canals constructed by authority of the United States, Act of August 30, 1890, (43 USC 945).

The public lands classified by this notice are shown on maps on file and available for inspection in the Phoenix District Office. Information may be obtained from Barbara Ahearn, Realty Specialist, at (602) 863–4464.

For a period of 30 days from the date of publication in the **Federal Register**, this classification shall be subject to exercise of administrative review and modification by the State Director as provided for in 43 CFR 2461.3 and 2462.3

Dated: June 26, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90–15400 Filed 7–2–90; 8:45 am]

BILLING CODE 4310–32–M

[CA–060–0–5440–10 ZBAF; 0–00160]

Indemnity Selection and Low-Level Radioactive Waste Disposal Site; San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: A joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) has been prepared by the Bureau of Land Management and the California Department of Health Services for a proposed State of California indemnity selection that upon conveyance and issuance of applicable licenses and permits would be utilized as a low-level radioactive waste (LLRW) disposal site. The LLRW is generated by universities, industry, utilities, hospitals, and biomedical research facilities. It comprises solid waste such as contaminated glassware, tools, protective clothing and other items. It will not include high-level waste such as spent fuel rods from nuclear power plants or waste from nuclear weapons production. The site would be a shallow land burial and would serve the Southwestern Compact states of California, Arizona, South Dakota and North Dakota. Under the Federal LLRW Policy Act as amended in 1985, states are responsible for disposal of LLRW. The proposed California site would serve the compact states for 30 years and then would be closed.

The proposed facility would include a 70-acre fenced disposal area, 7.6-acre support area (shop and operations building, parking, fuel and water tanks), and flood protection and drainage control berms within the 1000 acres. A right-of-way to the facility is also examined. The EIS/EIR examines impacts at the proposed site at Ward Valley and an alternative site at Silurian Valley. A No-Action alternative and an Alternative Technology for Shallow Land Burial are also examined. Impacts to transportation, wildlife, particularly the desert tortoise, air quality, water, vegetation, public health and safety among others were analyzed. Mitigation measures are identified. A limited number of copies of the EIS/EIR are available from: State of California, Department of Health Services, 714 P Street, room 616, Sacramento, CA 95814, Attention: Darice Bailey. Public hearings have been tentatively scheduled for July 16, 1990, in the cities of Riverside (10 a.m.) and San Bernardino (6:30 p.m.); July 17, 1990, City of Barstow (6:30 p.m.); July 18, 1990, City of Needles (6:30 p.m.).

DATES: The public comment period is for 60 days to August 15, 1990. Comments received after that day may not be considered in the Record of Decision. Comments should be sent to the above address at Department of Health Services.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli, California Desert District, 1695 Spruce St, Riverside, CA 92507.

Dated: June 18, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90–15345 Filed 7–2–90; 8:45 am]

BILLING CODE 4310–40–M

[OR–110–6310–11; OR–910–GPO–295]

Medford District Advisory Council; Meeting

AGENCY: Bureau of Land Management.

ACTION: Federal Register notice.

SUMMARY: Notice is hereby given in accordance with Public Law 99–463 that a meeting of the Bureau of Land Management's Medford District Advisory Council task force on blocking up BLM land ownerships will be held July 18, 1990. The meeting will be held from 10 a.m. to noon in the Josephine room of the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. The task force will further consider ways to facilitate blocking up public land ownership within the Medford District boundaries

to enable land management to function more economically.

Persons interested in making oral statements during the task force meeting, may do so following conclusion of the task force's agenda, or written statements may be submitted for the task force's consideration.

Anyone wishing to make an oral statement at the task force meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business July 17, 1990. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the task force meeting will be maintained in the District office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

David A. Jones,

District Manager.

[FR Doc. 90-15388 Filed 7-2-90; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-00-4212-12; AZA 23376-A]

Realty Action; Exchange of Public Lands in Apache County, AZ

AGENCY: Bureau of Land Management (BLM).

REALTY ACTION: Exchange of Public Lands, Apache County, Arizona.

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all public land within the following townships, ranges and sections are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 29 E.,
Sec. 18.
T. 11 N., R. 25 E.,
Sec. 12.
T. 11 N., R. 26 E.,
Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24 and 25.
T. 11 N., R. 27 E.,
Secs. 4, 24, 26, 27, 29, 30, 33, 34, and 35.
T. 11 N., R. 28 E.,
Secs. 18, 19, 20 and 28.
T. 12 N., R. 24 E.,
Secs. 24 and 28.
T. 12 N., R. 27 E.,
Sec. 28.
T. 12 N., R. 28 E.,
Secs. 10, 12, 14 and 30.
T. 12 N., R. 29 E.,
Secs. 12, 18, 20, 21, 27, 28 and 32.
T. 12 N., R. 30 E.,
Secs. 1, 3, 4, 5, 8, 9, 10, 11, 13, 14, 17, 21, 23, 26, 28, 29, 34 and 35.
T. 12 N., R. 31 E.,
Secs. 3, 10, 15, 21, 22, 27, 28, 33 and 34.
T. 13 N., R. 24 E.,
Sec. 26.
T. 13 N., R. 25 E.,
Secs. 4, 6 and 18.
T. 13 N., R. 28 E.,
Secs. 10, 12, 14 and 24.
T. 13 N., R. 29 E.,
Sec. 28.
T. 13 N., R. 30 E.,
Secs. 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 30 and 34.
T. 13 N., R. 31 E.,
Secs. 4, 6, 8, 10, 19, 21, 27, 28, 29, 30, 33 and 34.
T. 14 N., R. 26 E.,
Secs. 6, 12, 22 and 24.
T. 14 N., R. 27 E.,
Secs. 4, 6, 8, 10, 18, 20, 22, and 34.
T. 14 N., R. 28 E.,
Sec. 4.
T. 14 N., R. 29 E.,
Secs. 4, 8, 10, 12, 20, 24, and 30.
T. 14 N., R. 31 E.,
Secs. 18, 20, 22, 28, 30 and 34.
T. 15 N., R. 25 E.,
Sec. 32.
T. 15 N., R. 26 E.,
Secs. 4, 6, 8, 10, 12, 14, 20, 22, 24 and 30.
T. 15 N., R. 27 E.,
Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.
T. 15 N., R. 28 E.,
Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 28, and 30.
T. 15 N., R. 29 E.,
Secs. 12, 14 and 26.
T. 15 N., R. 31 E.,
Sec. 18.
T. 16 N., R. 26 E.,
Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.
T. 16 N., R. 27 E.,
Secs. 20.
T. 16 N., R. 28 E.,
Secs. 4, 6, 8, 10, 14, 18, 20, 22, 24, 26, 28, 30 and 34.
T. 16 N., R. 29 E.,
Secs. 28 and 34.
T. 17 N., R. 27 E.,
Sec. 6.
T. 17 N., R. 28 E.,
Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.
T. 18 N., R. 25 E.,
Sec. 6.
T. 18 N., R. 27 E.,
Secs. 22, 24, 26 and 28.
T. 19 N., R. 24 E.,
Secs. 24 and 26.
T. 19 N., R. 25 E.,
Secs. 2, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21 and 29.

Comprising 117,143.82 acres, more or less.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: June 22, 1990.

Paul J. Buff,

Acting District Manager.

[FR Doc. 90-15913 Filed 7-2-90; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-00-4212-13; CACA 26383]

California Desert District, Realty Action, Exchange of Public and Private Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action CACA 26383, exchange of public and private lands.

SUMMARY: The following described public lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 3 N., R. 4 W.
Sec. 10: N½NE¼, NE¼NW¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 11: NW¼NE¼, NE¼NW¼, SW¼SW¼, and SE¼SE¼;
Sec. 12: SW¼SW¼;
Sec. 14: N½NE¼;
Sec. 15: SE¼NE¼;
Sec. 26: S½SW¼NE¼, NE¼SE¼NE¼, E½NW¼SE¼NE¼, SW¼SE¼NE¼, N½NE¼NW¼SE¼, N½NW¼NW¼SE¼, SW¼NW¼NW¼SE¼, W½SW¼NW¼SE¼, and N½NW¼NE¼SE¼;

Containing 707.50 acres, more or less.

In exchange for these lands, the ARC-Las Flores Limited Partnership, a Georgia limited partnership, has offered the following non-Federal lands in San Bernardino County;

San Bernardino Meridian, California

T. 10 N., R. 5 E.
Sec. 1: lots 1, 2, 3 and 4, S½N½, and S½;

T. 10 N., R. 6 E.
Sec. 1: lots 1, 2, 3 and 4, and S½;
Sec. 5: lots 1, 2, 3 and 4, and S½;
Sec. 9: All;
T. 10 N., R. 7 E.
Sec. 5: Un-numbered lots (N½), and S½;
T. 11 N., R. 5 E.
Sec. 13: lots 1, 2, 3, 4, 5, 6, 7 and 8, and N½;
Sec. 23: All;
Sec. 25: N½, N½NE¼SW¼, NW¼SW¼, SW¼SW¼, S½SE¼SW¼, and S½SE¼;
T. 11 N., R. 6 E.
Sec. 1: SW¼, W½SE¼, and SE¼SE¼;
Sec. 3: lots 1, 2, 3 and 4, S½N½, and S½;
Sec. 7: lots 1, 2, 3 and 4, E½W½, and E½;
Sec. 11: lots 1, 2, 3 and 4, W½E½, and W½;
Sec. 15: N½, and W½SW¼;
Sec. 17: All;
Sec. 19: lots 1, 2, 3 and 4, E½W½, and E½;
Sec. 21: NE¼, and SW¼;
Sec. 23: All;
Sec. 25: All;
Sec. 27: All;
Sec. 29: NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 33: N½N½;
T. 11 N., R. 7 E.
Sec. 17: All;
Sec. 19: lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 29: All;
Sec. 31: lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, and E½;
Sec. 33: All;
Sec. 35: All;

Containing 14,987.85 acres, more or less.

The purpose of this exchange is to acquire significant natural resources and recreation lands and to create a more manageable public land unit in the Afton Canyon Natural Area of the California Desert Conservation Area.

Disposal of the fragmented and isolated public lands selected by the ARC-Las Flores Limited Partnership is consistent with the land tenure adjustment objectives of the California Desert Conservation Area Plan, as amended. The exchange would benefit the general public and the private sector. The public interest would be well served by completing the exchange.

The public land to be conveyed will be subject to the following terms and conditions:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 43 U.S.C. 945.

There will be no mineral reservation to the United States. All minerals will be conveyed in the exchange patent.

B. Third Party Rights. Public land conveyed will be subject to the following:

1. Those rights for construction, operation and maintenance of a water reservoir and ditch granted to Harry C. Nelson and Lela W. Nelson, their successors or assigns, by right-of-way Serial No. CALA 054987 under the Act of March 3, 1891, as amended (43 U.S.C. 946–949), as to portions of the S½SW¼NE¼ and NW¼NW¼NW¼SE¼, sec. 26, T.3N., R.4W., SBM.

2. Those rights for construction, operation and maintenance of a water pipeline granted to Harry C. Nelson and Lela W. Nelson, their successors or assigns, by right-of-way Serial No. CALA 056428 under the Act of March 3, 1891, as amended (43 U.S.C. 946–949), as to portions of the SE¼SW¼NE¼, SW¼SE¼NE¼, and N½NW¼NE¼SE¼, sec. 26, T.3N., R.4W., SBM.

3. Those rights for construction, operation and maintenance of two single-circuit 500kV electric transmission lines and access roadways granted to Southern California Edison Company, its successors or assigns, by right-of-way Serial No. CARI 06876 under the Act of March 4, 1911, as amended (43 U.S.C. 961), as to portions of the S½NW¼, sec. 10; and the S½NE¼NW¼ and S½NW¼NE¼, sec. 11, T.3N., R.4W., SBM.

Lands conveyed to the United States will be subject to various easements and rights-of-way to third parties. There will be no mineral reservations to the exchange proponent or to third parties. All minerals in the offered non-Federal lands will be conveyed to the United States.

As provided in 43 CFR 2201.1(b), the publication of this notice in the Federal Register shall segregate, subject to existing valid rights, the public lands described herein from all other forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document, upon publication in the Federal Register of a termination of the segregation, or two years from the date of this publication, whichever occurs first.

The values of the lands to be exchanged are in approximate balance. Equalization of values will be achieved by acreage adjustment or a payment to the United States by ARC-Las Flores Limited Partnership of funds in an amount not to exceed 25 percent of the value of the public lands to be conveyed.

Additional information about this exchange is available from the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311 (619–256–3591) and the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of forty-five (45) days from the date of publication of this notice in the Federal Register interested parties may submit comments to the District Manager at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 22, 1990.

Gerald E. Hillier,

District Manager.

[FR Doc. 90–15386 Filed 7–2–90; 8:45 am]

BILLING CODE 4310–40–M

[OR 46067; OR–080–00–4212–14: GPO–293]

Realty Action; Proposed Direct Sale, Oregon

June 25, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 3 S., R. 3 E.,
Sec. 5, Lots 5 and 6,

Containing 1.94 acres in Clackamas County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the amount may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relative small size and lack of physical or legal access, the best use of the parcel is merging it with an adjoining ownership. Use of direct sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Eastside Management Framework Plan and the

public interest will be served by offering this land for sale.

The parcel is being offered to Janice L. Daniel using direct sale procedures authorized under 43 CFR 2711.3–3.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Ms. Daniel will be required to submit proof that she is a U.S. citizen and is at least 18 years of age or more. She will also be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act. Ms. Daniel must include with the bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

4. The patent will be issued subject to Right-of-Way Reservation OR 46066 in favor of the Bonneville Power Administration and all valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address below.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Clackamas Area Manager, Salem District Office, 1717 Fabry Road SE, Salem, OR 97306. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become final determination of the Department of the Interior.

Peter J. Schay,

Acting Clackamas Area Manager.

[FR Doc. 90–15389 Filed 7–2–90; 8:45 am]

BILLING CODE 4310–33–M

[OR 46068; OR–080–00–4212–14; GPO–294]

Realty Action; Proposed Modified Competitive Sale, Oregon

June 25, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 3 S., R. 3 E.,
Sec. 5, Lot 4,
Containing 0.29 acres in Clackamas County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the amount may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relative small size, the best use of the parcel is merging it with an adjoining ownership. Use of modified competitive sale procedures will avoid an inappropriate land ownership pattern. The sale is consistent with the Eastside Management Framework Plan and the public interest will be served by offering this land for sale.

The parcel is being offered only to the following four adjoining landowners using modified competitive sale procedures authorized under 43 CFR 2711.3–2: Terry W. Emmert (owner of Tax Lots 100, 200, 300, 400, and 800, Map 3 3E 5AB), Albert and Lorene Ott or Eileen Jones (owners of Tax Lot 900, Map 3 3E 5B), Elbert A. and Marlene L. White (owners of Tax Lot 1800, Map 3 3E 5B), and David L. Tyler and Sandra L. Svatos (owners of Tax Lot 100, Map 3 3E 5B).

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306, prior to 11 a.m. on September 18, 1990. Each bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Bureau of Land Management, for not less than the appraised value and shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, "Bid for Public Land Sale OR 46068, September 18, 1990". The written sealed bids will be opened and declared at the sale.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The high bidder will be required to submit proof that he is a U.S. citizen and is at least 18 years of age or more.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act. All qualified bidders must include with their bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

4. The patent will be issued subject to all valid existing rights and reservations of record.

If the land identified in this notice is not sold it will be offered competitively on a continuing basis until sold or until December 5, 1990. Sealed bids will be accepted at the Salem District Office during regular business hours. All bids received will be opened the first Wednesday of each month, beginning on October 3, 1990. To be considered, bids must be received by 11 a.m. on the day of the bid opening.

Detailed information concerning the sale is available for review at the Salem District Office, address above.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Clackamas Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will

become the final determination of the Department of the Interior.

Peter J. Schay,

Acting Clackamas Area Manager.

[FR Doc. 90-15390 Filed 7-2-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-942-00-4730-12; GPO-287]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 32 S., R. 6 W., accepted 6/1/90
T. 29 S., R. 7 W., accepted 6/8/90
T. 14 S., R. 8 W., accepted 6/1/90
T. 31 S., R. 12 W., accepted 6/1/90
T. 30 S., R. 13 W., accepted 6/8/90
T. 21 S., R. 3 E., accepted 6/8/90

If protests against a survey, as shown on any of the above plats, are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plats will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plats may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 20, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-15291 Filed 7-2-90; 8:45 am]

BILLING CODE 4310-33-M

[NM-940-00-4214-10; NM NM 84606]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 164.60 acres of National Forest System land for the Jemez Falls Campground addition. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all uses other than the mining laws.

DATES: Comments and requests for a meeting should be received on or before October 2, 1990.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: On June 6, 1990, the U.S. Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Santa Fe National Forest

T. 18 N., R. 3 E.,
Sec. 3, lots 5, 6, and 7, E½SE¼NW¼, and E½E½SW¼;
Sec. 10, NE¼NE¼NW¼.

The areas described aggregate 164.60 acres in Sandoval County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections, in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard, on the proposed withdrawal, must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years, from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses, which will be permitted during this segregative period, are any uses permitted by the Forest Service under existing laws and regulations.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Department of Agriculture.

Dated: June 20, 1990.

Monte G. Jordan,

Associate State Director.

[FR Doc. 90-15392 Filed 7-2-90; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Pacific Northwest Outer Continental Shelf (OCS) Task Force Meeting

The Pacific Northwest OCS Task Force will meet July 16, 1990, from 9 a.m. to 5 p.m. at the Red Lion Inn/Sea Tac, 18740 Pacific Highway South, Seattle, Washington 98188 (206-246-8600). This will be the fifth meeting of the task force, which was established January 19, 1989, in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. appendix 1. The meeting is open to the public.

The agenda for the meeting will cover a number of topics including: a discussion of options and strategies for implementing the environmental studies endorsed by the task force, a review and update of related research efforts being conducted by universities, Federal and State government agencies and other research groups, and the establishment of an advisory group to the task force.

The task force is composed of representatives of the Columbia River Inter-Tribal Fish Commission, Northwest Indian Fisheries Commission,

State of Oregon, State of Washington, and the Minerals Management Service (MMS).

The purpose of the task force is to assist the Secretary of the Interior with resolution of OCS issues specific to the Northwest and to help develop coordinated programs and policies related to the potential leasing and development of oil and gas resources of the OCS off Oregon and Washington.

Minutes of the meeting will be made available for public inspection and copying at the MMS, Pacific OCS Region, Suite 244, 1340 West Sixth Street, Los Angeles, California 90017. For more information, contact John Smith or Ann Copsey at (213) 894–4154 or 7101.

Dated: June 27, 1990.

Approved:

Ed Cassidy,

Deputy Director.

[FR Doc. 90–15409 Filed 7–2–90; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Outer Continental Shelf (OCS)

Advisory Board Scientific Committee (SC); Physical Oceanography Workshop

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Physical Oceanography Subcommittee of the OCS Advisory Board Scientific Committee will meet in a workshop session at the Ramada Hotel Fisherman's Wharf, 590 Bay Street, San Francisco, California 94133, telephone (415) 885–4700, from 8 a.m. to 5 p.m. on July 31–August 1, 1990.

The agenda for the workshop will include the review of the Minerals Management Service (MMS) physical oceanography studies program, and planning of future research strategies for a coordinated MMS national program.

A detailed agenda is not yet available but may be requested from the MMS.

The meetings are open to the public. Inquiries concerning this workshop should be addressed to: Dr. David F. Johnson, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787–1717.

Dated: June 20, 1990.

Ed Cassidy

Deputy Director, Minerals, Management Service.

[FR Doc. 90–15393 Filed 7–2–90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 23, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 18, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Independence County

Batesville Commercial Historic District (Boundary Increase), Main St. from N of Central to 1 block N of Church, Batesville, 90001097.

CONNECTICUT

Fairfield County

Byran School, Between Sherman Ave. and Western Junior Hwy., Greenwich, 90001110

Cos Cob Power Station, Roughly bounded by Metro North RR tracks, the Mianus R. and Sound Shore Dr., Greenwich, 90001096

Selleck, Sylvanus, Gristmill, 124 Old Mill Rd., Greenwich, 90001109.

Hartford County

East Weatoque Historic District, Roughly, properties on East Weatoque St. from just N of Riverside Dr. to Hartford Rd., and Folly Farm property to S, Simbury, 90001107.

Hew Haven County

Five Mile Point Lighthouse, Lighthouse Point Park, New Haven, 90001108.

Tolland County

Union Green Historic District, Roughly, area N of jct. of Buckley Hwy. and Cemetery Rd. to jct. of Kinney Hollow and Town Hall Rds., Union, 90001099.

FLORIDA

Palm Beach County

Morton House, 253 Barcelona Rd., West Palm Beach, 90001106.

MASSACHUSETTS

Suffolk County

Calf Pasture Pumping Station Complex, 435 Mount Vernon St., Boston, 90001095.

MINNESOTA

Ramsey County

Fitzpatrick Building, 465–467 N. Wabasha St., St. Paul, 90001113.

Rice County

McMahon, Thomas Bridget Shanahan, House, 603 Division St., E., Faribault, 90001112.

MISSOURI

Jackson County

Stine and McClure Undertaking Company Building, 924–926 Oak St., Kansas City, 90001105.

Jasper County

Fox Theater, 415 Main St., Joplin, 90001100

Newman Brothers Building, 602–608 S. Main St., Joplin, 90001101

Rains Brothers Building, 906–908 S. Main St., Joplin, 90001102.

Monore County

Paris Male Academy, 411 E. Monroe St., Paris, 90001103.

Pike County

Bacon, Charles, House, 819 Kentucky St., Louisiana, 90001104.

NORTH CAROLINA

Catawba County

Reinhardt, William Pinckney, House (Catawba County MPS), Jct. of SR 2012 and SR 2013, Maiden vicinity, 90001111

TEXAS

Harris County

Lowry, Fayette C., House (Houston Heights MPS), 2009 Harvard, Houston, 90001045.

WASHINGTON

Thurston County

Gate School (Rural Public School Buildings in Washington State MPS), 16925 Moon Rd. SW., Rochester vicinity, 90001094.

The following property was erroneously listed under Conejos County, Colorado, on a previous pending list:

TEXAS

Bastrop County

Colorado River Bridge at Bastrup, SR 150 over the Colorado R. Bastrup 90001031.

A proposed move is being considered for the following property:

MINNESOTA

Goodhue County

Zumbrota Bridge, Zumbrota Covered Bridge Park off MN 58, Zumbrota 75000984.

[FR Doc. 90–15445 Filed 7–2–90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31599 (Sub-No. 2)]

Burlington Northern Railroad Co.; Connector Track Construction Near Waltonville in Jefferson County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission grants Burlington Northern Railroad Company's petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901 for the construction of a 1,568-foot connector track near Waltonville in Jefferson County, IL, and makes it effective retroactively to the date of the construction.

DATES: This decision in effective on August 2, 1990. Petitions for stay must be filed by July 13, 1990. Petitions for reconsideration must be filed by July 23, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31599 (Sub-No. 2) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795, (202) 429–3000.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: June 26, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–15415 Filed 7–2–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31696]

Wisconsin Central Ltd.; Trackage Rights Exemption—Lake Superior & Ishpeming Railroad Company

Lake Superior & Ishpeming Railroad Company has agreed to grant overhead trackage rights to Wisconsin Central Ltd. over 12.06 miles of track between milepost 85.66, at Humboldt Junction, MI, and milepost 73.6, at Landing Junction, MI. The trackage rights were to become effective on or after June 21, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet Gilbert, Wisconsin Central Ltd., 6250 North River Road, suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 19, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–15312 Filed 7–2–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–263 (Sub-No. 2X)]

Staten Island Railway Corp. Abandonment Exemption; In Richmond County, NY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Staten Island Railway Corporation of 3.65 miles of rail line between Arlington Yard Station (milepost 0.0) and Travis (milepost 3.65), in Richmond County, NY, subject to a salvage condition and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 2, 1990. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by July 13, 1990; [1] petitions to stay must be filed by July 13, 1990, and petition for reconsideration must be filed by July 23, 1990. Request for a public use condition must be filed by July 13, 1990.

ADDRESSES: Send pleadings, referring to Docket No. AB–263 (Sub-No. 2X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Nathan R. Fenno, 1 Railroad Ave., Cooperstown, NY 13326.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721).

Decided: June 20, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary

[FR Doc. 90–15416 Filed 7–2–90; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1990, and the Joint Board proposes to renew its charter for a further two year period. This notice describes the Advisory Committee and invites applications from those interested in service on it.

[1] *See Exempt. of Rail Abandonment—Offer of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

1. General. To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology, and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, in cooperation with the Society of Actuaries and the American Society of Pension Actuaries, jointly administer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Purposes. The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views of examination content are understood.

3. Function. The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. Membership. The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examinations extant in the community of actuaries. In this regard, appointment will be made from the actuarial community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will be comprised of not more than nine members.

The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travel, meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Any questions may be directed to the Joint Board's Executive Director at 202–535–6787.

The deadline for accepting applications is September 17, 1990.

Dated: June 26, 1990.

Leslie S. Shapiro,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 90–15446 Filed 7–2–90; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notifications; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on May 25, 1990, disclosing that there have been changes in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following members have undergone name changes: Aetna Cement Corporation is now Aetna Cement Company/ESSROC Materials Inc.; Coplay Cement Company is now Coplay Cement Company/ESSROC Materials Inc.; Rochester Portland Cement Corporation is now Rochester Portland Cement Company/ESSROC Materials Inc.; Lake Ontario Cement Limited is now Lake Ontario Cement Limited/ESSROC Canada Inc.; and Miron Inc. is now Miron Inc./ESSROC Canada.

The following additional parties have become members of PCA: Holnam Inc. and National Portland Cement Company.

In addition, the following parties should no longer be listed as separate members: LoneStar-Falcon; Dundee Cement Company; Northwestern States Portland Cement Co.; Ideal Basic Industries, Inc.; and Ideal Cement Company Ltd.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985, 50 Fed. Reg. 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, December 14, 1989, and January 31, 1990, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November

17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43146), February 1, 1990 (55 FR 3497), and March 7, 1990 (55 FR 8204), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-15394 Filed 7-2-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Johnson Matthey, Inc.; Application for Registration

By Notice dated January 30, 1990, and published in the **Federal Register** on February 9, 1990 (55 FR 4728), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, NJ 08066, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Pethidine (meperidine) (9230)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 13, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-15417 Filed 7-2-90; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Sigma Chemical Co.; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 9, 1990, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118 made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marijuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-bromo-2,5-Dimethoxyamphetamine (7391).	I
4-methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-dimethoxyamphetamine (DMA) (7396).	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
4-methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethylamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Etorphine (except HCL) (9056)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-Oxide (9307)	I
Normorphine (9313)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP) (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Fenethylline (1503)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300)	II
Morphine-3-Glucuronide (9329)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 2, 1990.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: June 14, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-15418 Filed 7-2-90; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Stepan Chemical Co.; Application for Registration

By Notice Dated April 24, 1990, and published in the **Federal Register** on May 11, 1990, (55FR19805), Stepan Chemical Company, Natural Products Department, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in

accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 14, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration

[FR Doc. 90-15419 Filed 7-2-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Iowa State Standards; Notice of Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrators for Occupational Safety Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of subpart J of part 1952 containing the decision. Iowa was granted final approval under Section 18(e) of the Act on July 2, 1985.

The Iowa Plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter of December 12, 1989, from Kelly G. Raines, Law Clerk, to the Des Moines Area Office, and incorporated as part of the Plan, the State submitted State standards comparable to: Servicing of Multi-Piece and Single Piece Rim Wheels; Technical Amendment, 29 CFR 1910.77, as published in **Federal Register** (53 FR 34736, dated September 8, 1988). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on October 10, 1988, as ARC 9305. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for October 31, 1988. No comments were received. This resolution was adopted by the Division of Labor Services on March 17, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective May 10, 1989, and notice of its adoption was published by the State on April 5, 1989.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rule; Amendment, as published in the **Federal Register** (53 FR 35625, dated September 14, 1988). This standard, which is contained in Chpater 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on October 19, 1988, as ARC 9370. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for November 14, 1988. No comments were received. This resolution was adopted by the Division of Labor Services on March 17, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective May 10, 1989, and notice of its adoption was published by the State on April 5, 1989.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rule; Amendment, 29 CFR 1926.58, as published in the **Federal Register** (53 FR 35627, dated September 14, 1988). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on October 19, 1988, as ARC 9369. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for November 14, 1988. No comments were received. This resolution was adopted by the Division of Labor Services on March 17, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective May 10, 1989, and notice of its adoption was published by the State on April 5, 1989.

The State also submitted State standards comparable to: Crane or Derrick Suspended Personnel Platforms, 29 CFR 1926.550, as published in the **Federal Register** (53 FR 35953, dated September 15, 1988). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice of Intended Action in the Iowa Administrative Bulletin on September 21, 1988, as ARC 9224. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for October 17, 1988. No comments were received. This resolution was adopted by the Division of Labor Services on March 17, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective May 10, 1989, and notice of its adoption was published by the State on April 5, 1989.

The State also submitted State standards comparable to: Occupational Safety and Health Regulations for Construction; correction, 29 CFR 1926.302, as published in the **Federal Register** (53 FR 36009, dated September 16, 1988). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on October 19, 1988, as ARC 9369. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for November 14, 1988. No comments were received. This resolution was adopted by the Division of Labor Service on March 17, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective May 10, 1989, and notice of its adoption was published by the State on April 5, 1989.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, correction, 29 CFR 1910 and 1926, as published in the **Federal Register** (53 FR 37080, dated September 23, 1988). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on October 19, 1988, as ARC 9369. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for November 14, 1988. No comments were received. This resolution was adopted by the Division of Labor Services on March 17, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective May 10, 1989, and notice of its adoption was published by the State on April 5, 1989.

The State also submitted State standards comparable to: Access to Employee Exposure and Medical Records; Final Rule, 29 CFR 1910.20, as published in the **Federal Register** (53 FR 38162, dated Septebmer 29, 1988). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on April 5, 1989, as ARC 9788. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for April 27, 1989. No comments were received. This resolution was adopted by the Division of Labor Services on May 25, 1989, pursuant to chapter 17a, Iowa Code. The standard was effective July 20, 1989, and notice of its adoption was published by the State on June 14, 1989.

The State also submitted State standards comparable to: Hazard Communication, 29 CFR 1910.1200, as published in the **Federal Register** (54 FR

6888, dated February 15, 1989). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on April 5, 1989, as ARC 9788. In compliance with Iowa Code § 88.5(1)"b", a public hearing was scheduled for April 27, 1989. No comments were presented and no written comments were received. This resolution was adopted by the Division of Labor Services on May 25, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective July 20, 1989, and notice of its adoption was published by the State on June 14, 1989. Iowa also has promulgated Right to Know Rules which are broader than the State's Hazard Communication Standard. These rules establish requirements for Community Right to Know (Chapter 130) and Public Safety/Emergency Response Right to Know (Chapter 140) in addition to the Worker Right to Know requirements (Chapter 120). However, these additional provisions are administered separately from the State's OSHA program.

The State also submitted State standards comparable to: Hazardous Waste Operations and Emergency Response; Final Rule, 29 CFR 1910.120, as published in the **Federal Register** (54 FR 9317, dated March 6, 1989). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on April 5, 1989, as ARC 9788. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for April 27, 1989. No comments were presented and no written comments were received. This resolution was adopted by the Division of Labor Services on May 25, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective July 20, 1989, and notice of its adoption was published by the State on June 14, 1989.

The State also submitted State standards comparable to: Asbestos Collection of Information Requirements, 29 CFR 1910.1001, as published in the **Federal Register** (54 FR 29546, dated July 13, 1989). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was published as a Notice Of Intended Action in the Iowa Administrative Bulletin on September 6, 1989, as ARC 189A. In compliance with Iowa Code section 88.5(1)"b", a public hearing was scheduled for September 28, 1989. No comments were received. This resolution was adopted by the Division of Labor Services on October 26, 1989, pursuant to Chapter 17a, Iowa Code. The standard was effective December 20, 1989, and notice of its adoption was published by the State on November 15, 1989.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective July 3, 1990.

(Section 18, Public Law 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Kansas City, Missouri, this 2nd day of May, 1990.

Thomas H. Seymour, P.E.

Acting Regional Administrator.

[FR Doc. 90-15426 Filed 7-2-90; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Medical Quality Assurance Assessment.

3. The form number if applicable: Not applicable.

4. How often the collection is required: The assessment will be conducted one time for each medical licensee.

5. Who will be required or asked to report: Persons holding NRC licenses under 10 CFR part 35 for the medical use of byproduct material.

6. An estimate of the number of responses: An average of 725 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately two hours per response, for an average annual industry total of 1450 hours.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: As part of an effort to modify the regulatory framework concerning medical quality assurance, the NRC plans to continue its one-time assessment of QA programs and procedures at all NRC medical licensees' facilities. The assessment, conducted through a questionnaire that will be completed by NRC inspectors during scheduled safety inspections of medical licensees, will provide specific information on the QA programs and procedures that are in use at licensees' medical institutions. Results of the assessment will guide NRC's QA rulemaking effort by providing information about QA practices which should be addressed in NRC regulations.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0148), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of June 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 90-15406 Filed 7-2-90; 8:45 am]

BILLING CODE 7590-01-M

Below Regulatory Concern; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This policy statement establishes the framework within which the Commission will formulate rules or make licensing decisions to exempt from some or all regulatory controls certain practices involving small quantities of radioactive material. Opportunity for public comment will be provided with each rulemaking and each licensing action where generic exemption provisions have not already been established. The exemptions may involve the release of licensee-controlled radioactive material either to the generally accessible environment or to persons who would be exempt from Commission regulations. Practices for which exemptions may be granted include, but are not limited to, (1) the release for unrestricted public use of lands and structures containing residual radioactivity; (2) the distribution of consumer products containing small amounts of radioactive material; (3) the disposal of very low-level radioactive waste at other than licensed disposal sites; and (4) the recycling of slightly contaminated equipment and materials. As described in this policy statement, NRC intends to continue exempting specific practices from regulatory control if the application or continuation of regulatory controls is not necessary to protect the public health and safety and the environment, and is not cost effective in further reducing risk. The policy statement defines the dose criteria and other considerations that will be used by NRC in making exemption decisions. The policy establishes individual dose criteria (1 and 10 mrem per year (0.01 and 0.1 millisievert per year)) and a collective dose criterion (1000 person-rem per year (10 person-Sievert per year)). These criteria, coupled with other considerations enumerated in the policy statement, will be major factors in the Commission's determination on whether exemptions from regulatory controls will be granted.

The policy statement establishes a consistent risk framework for regulatory exemption decisions, ensures an adequate and consistent level of protection of the public in their use of radioactive materials, and focuses the Nation's resources on reducing the most significant radiological risks from practices under NRC's jurisdiction. The average U.S. citizen should benefit from implementation of the BRC policy through (1) enhanced ability of NRC, Agreement States, and licensees to focus resources on more significant risks posed by nuclear materials; (2) timely and consistent decisions on the need for cleanup of contaminated sites; (3) increased assurance that funds available to decommission operating nuclear facilities will be adequate; (4) reduced costs and overall risks to the public from managing certain types of slightly radioactive waste in a manner commensurate with their low radiological risk; and (5) increased assurance of a consistent level of safety for consumer products containing radioactive material under the Commission's jurisdiction.

EFFECTIVE DATE: July 3, 1990.

ADDRESSES: Documents referenced in this policy statement are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: The appropriate NRC Regional Office:

Region I—Dr. Malcom Knapp, King of Prussia, Pennsylvania; telephone (215) 337-5000

Region II—Mr. J. Philip Stohr, Atlanta, Georgia; telephone (404) 331-4503

Region III—Mr. Charles E. Norelius, Glen Ellyn, Illinois; telephone (708) 790-5500

Region IV—Mr. Arthur B. Beach, Arlington, Texas; telephone (817) 860-8100

Region V—Mr. Ross A. Scarano, Walnut Creek, California; telephone (415) 943-3700

Federal and State Government Officials may contact; Mr. Frederick Combs, U.S. Nuclear Regulatory Commission, Washington DC 20555, Office of Governmental and Public Affairs, telephone (301) 492-0325

Questions may also be directed to the following individuals:

Dr. Donald A. Cool, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492-3785

Mr. John W. N. Hickey, Office of Nuclear Material Safety and Safeguards; telephone (301) 492-3332

Mr. L. J. Cunningham, Office of Nuclear Reactor Regulation; telephone (301) 492-1086

SUPPLEMENTARY INFORMATION:

Statement of Policy

I. Introduction

Ionizing radiation is a fact of life. From the day we are born until the day we die, our bodies are exposed to low levels of radiation emitted from a variety of natural and man-made sources, including the cosmos, earth, building materials, industrial facilities, clothing, medicine, food, air, and our own bodies. All materials exhibit some degree of radioactivity. The consensus among scientists is that even low levels of radiation typical of the natural environment pose some correspondingly low risk of adverse health effects to humans. Recognition of the risk due to radiation exposure from natural sources provides perspective on the risks associated with human uses of radioactive materials.

Natural and man-made radionuclides are used in today's society in many forms for a variety of purposes, such as medical therapy and diagnosis, materials analysis, and power generation. In general, the existing regulatory framework ensures that radioactive materials are controlled consistent with the degree of risk posed to the public and the environment. Some products such as smoke detectors contain small quantities of radioactive materials that pose such a low risk that they have been widely distributed without continuing regulatory controls. To require that all radioactive materials be controlled in the same strict manner regardless of the risks they pose would not be a sound use of limited National resources. Such strict control could also deprive society of the benefits already derived from appropriate uses of radioactive materials and radiation. In addition, such control would not significantly reduce the risks associated with radiation exposure from controlled sources compared with risks associated with natural background radiation. Therefore, responsible decisions need to be made on how radioactive materials are controlled based on a judgement about the levels of risk they pose and the effectiveness of regulatory control to reduce those risks.

Over the last several years, the Commission has pursued development of a risk threshold to distinguish those radioactive materials that do not require the same stringent level of regulatory control as that imposed on potentially more hazardous materials. The Commission recognized throughout this process that the threshold would need to be low enough to continue to ensure adequate protection of the public. The Commission also recognized that the

threshold should be compatible with technological and measurement capabilities so it could be readily used in NRC's regulatory program for nuclear materials. In addition, the Commission identified the need to balance incremental reductions in risk below the safety threshold with the attendant expenditure of private and public resources.

In today's notice, the Commission establishes a policy to guide its decisions on which radioactive materials are "below regulatory concern" (BRC) because the low levels of risk they pose do not warrant regulation to the same degree as other radioactive materials to ensure adequate protection of the public and the environment. This policy translates the Commission's judgement on acceptable risk into explicit and practical criteria on which to base decisions to exempt practices from the full scope of NRC's regulatory program. The BRC criteria are necessary to ensure adequate and consistent decisions on acceptable risks posed by decontaminated and decommissioned nuclear facilities, consumer products containing radioactive materials, and very low activity radioactive wastes. These decisions will be implemented by the Commission through rulemakings and licensing decisions based on careful and thorough analyses of the risks associated with specific practices to ensure that the public is adequately protected.

Under the regulatory approach used by the U.S. Nuclear Regulatory Commission (NRC), the use of radioactive materials is subject to limits and conditions that ensure the protection of the health and safety of both workers and members of the general public, and the environment. For example, radioactive material is controlled by NRC- and Agreement State-licensees to ensure that dose limits are not exceeded. In addition, sources of radiation are designed, used and disposed of in a manner that ensures that exposures to radiation or radioactive material are as low as is reasonably achievable (ALARA), economic and social factors being taken into account. NRC has endorsed the ALARA provision in regulatory practice for a number of years (10 CFR part 20). However, NRC has not yet provided criteria that would establish the basis for defining the level of residual risk at which further regulatory control is no longer warranted.

The policy statement in today's notice provides a unifying risk framework for making decisions about which practices can be exempted from the full scope of NRC's comprehensive regulatory controls. Under the criteria and principles of this policy statement, exemptions of radioactive materials from regulatory controls would involve the transfer of very small quantities of the materials from a regulated to an unregulated status. NRC will analyze each proposed exemption to ensure that doses resulting from the proposed transfer will be sufficiently low that the public health and safety and the environment will remain adequately protected. A licensed activity producing an exempt material would continue to be subject to the full range of regulatory oversight, inspection, and enforcement actions up to and including the point of transfer to an exempt status. The Commission also intends to conduct research periodically to evaluate the effectiveness of this policy and to confirm the safety bases that support the exemption decisions.

Through appropriate rulemaking actions or licensing decisions, the Commission will establish constraints, requirements, and conditions applicable to specific exemptions of radioactive materials from NRC's regulations. The NRC will verify that licensees adhere to these exemption constraints and conditions through NRC's licensing, inspection, and enforcement programs. For example, the Commission may promulgate regulations that would require some type of labeling so that consumers could make informed decisions about purchasing a product containing exempted materials. Such labeling is presently required by the Commission for smoke detectors containing radioactive material (see 10 CFR 32.26). The NRC ensures that manufacturers label the detectors in compliance with the labeling requirement through licensing reviews and inspections. Specific source controls and exemption conditions are not discussed further in this policy because they will be more appropriately addressed in developing the exemption requirements for specific exemption proposals.

The concept of regulatory exemptions is not new. The Atomic Energy Act of 1954, as amended, authorizes the Commission to exempt certain classes, quantities, or uses of radioactive material when it finds that such exemptions will not constitute an unreasonable risk to common defense and security and to the health and safety of the public. In the 1960s and 1970s, the Atomic Energy Commission used this authority to promulgate tables of exempt quantities and concentrations for radioactive material. These exemptions allow a person or a licensee, under certain circumstances, to receive, possess, use, transfer, own, or acquire radioactive material without a requirement for a license (30 FR 8185; June 26, 1965 and 35 FR 6425; April 22, 1970). The Commission currently allows distribution of consumer products or devices to the general public and allows releases of radioactive material to the environment consistent with established regulations. For example, regulations currently specify the conditions under which licensees are allowed to dispose of small quantities of radioactive material into sanitary sewer systems (see 10 CFR 20.303). These existing regulations specify requirements, conditions, and constraints that a licensee must meet if radioactive material is to be "transferred" from a regulated to an exempt or unregulated status.

More recently, section 10 of the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985 directed the Commission to develop standards and procedures and act upon petitions "to exempt specific radioactive waste streams from regulation * * * due to the presence of radionuclides * * * in sufficiently low concentrations or quantities as to be below regulatory concern." The Commission responded to this legislation by issuing a policy statement on August 29, 1986 (51 FR 30839). That policy statement contained criteria that, if satisfactorily addressed in a petition for rulemaking, would allow the Commission to act expeditiously in proposing appropriate relief in its regulations on a "practice-specific" basis consistent with the merits of the petition.

Federal and State agencies have also developed and implemented similar exemptions based on evaluations of their risks to the public and the environment. The Food and Drug Administration (FDA), for example, has applied sensitivity-of-method, risk-based guidelines in connection with the regulation of animal drugs, food contaminants, and trace constituents in some food additives. Similarly, the Environmental Protection Agency (EPA) established exemption or threshold levels based on individual risks in the regulation of pesticides and other toxic and carcinogenic chemicals. For example, EPA employs such a concept in defining hazardous waste through the new Toxicity Characteristic rule in 40 CFR part 261 (55 FR 11798; March 29, 1990).

The Commission believes that the Below Regulatory Concern policy is

needed to establish a consistent, risk-based framework for making exemption decisions. Specifically, this framework is needed to (1) focus the resources of NRC, Agreement States, and licensees on addressing more significant risks posed by nuclear materials; (2) ensure that beyond the adequate protection threshold potential benefits from additional regulation outweigh the associated burdens; (3) establish residual radioactivity criteria and requirements for decommissioning and cleanup of radioactive contamination at licensed and formerly-licensed facilities; (4) ensure that licensee decommissioning funding plans provide adequate funds to cover the costs of cleanup of these facilities to protect people and the environment; (5) ensure that the public is consistently protected against undue risk from consumer products that contain radioactive materials under the Commission's jurisdiction; (6) provide decision criteria for reviewing petitions to exempt very low level radioactive wastes in accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985; and (7) ensure that existing exemptions involving radioactive materials are consistent and adequate to protect the public.

Commission's BRC policy establishes an explicit and uniform risk framework for making regulatory exemption decisions. This policy will also be used by the Commission as a basis for reevaluating existing NRC exemptions to ensure that they are consistent with the criteria defined herein. In lieu of such a policy, the Commission could continue the current practice of evaluating exemptions on a case-specific basis. Such an approach, however, does not ensure consistent evaluation and control of risks associated with exempted practices. For this reason and the reasons discussed above, the Commission has established the BRC Policy Statement. This policy supersedes the Atomic Energy Commission's policy statement on this subject (30 FR 3462; March 16, 1965).

The Commission recognizes that Agreement States will play an important role in the implementation of the Below Regulatory Concern policy, specifically in the areas of developing and enforcing compatible State regulations, regulating cleanup and decommissioning of certain types of contaminated nuclear facilities, and exempting certain low-level radioactive wastes from requirements for disposal in licensed low-level waste disposal facilities. The Atomic Energy Act of 1954, as amended, gives to the Federal government the exclusive authority to regulate source, special nuclear, and byproduct materials to ensure protection of the public health and safety. While Congress subsequently provided for Federal-State agreements under Section 274b of the Atomic Energy Act through which States could assume regulatory responsibilities in lieu of Federal regulation for certain classes of nuclear materials, it required that State radiation protection standards be coordinated and compatible with the Federal standards for radiation protection.

NRC regulations exempting BRC wastes will not affect the authority of State or local agencies to regulate BRC wastes for purposes other than radiation protection in accordance with Section 274b of the Atomic Energy Act. Under the Atomic Energy Act, Congress intended that there be uniformity between the NRC and Agreement States on basic radiation protection standards. Future BRC Rulemakings will establish basic radiation protection standards below which regulatory oversight is not needed. The Commission will address compatibility issues in future rulemakings. In initiating proceedings to implement NRC's BRC policy, the Commission will continue to consult with and seek the advice of the States.

Some States have expressed concerns that economic and institutional impacts of actions resulting from the Commission's BRC policy may undermine their efforts to develop new disposal facilities for low-level radioactive waste in accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985. These States would prefer to establish their own standards for determining which wastes should be exempted from regulatory control rather than adopting standards that are compatible with uniform Federal standards. The Commission has developed the BRC policy to provide a uniform and consistent health and safety framework for exemption decisions. In so doing, the Commission recognized the concerns expressed by Congress when it enacted the Low-Level Radioactive Waste Policy Amendments Act of 1985 that health, safety, and environmental considerations should take precedence over economic or institutional concerns (see Senate Report 99-199 that accompanied S. 1517, Senate Committee on Energy and Natural Resources, November 22, 1985, 99th Congress, 1st Session at page 9).

The Commission is confident that waste exemption decisions made in accordance with requirements that implement its BRC policy will be adequate to ensure protection of the public health and safety. The Commission is concerned that inconsistent regulation of BRC wastes could result in differing levels of risks to the public and the environment through the application of different residual radioactive criteria in the cleanup of contaminated sites. The Commission is also concerned that inconsistent regulation of BRC waste could in fact undermine State and Federal efforts to manage low level waste safely. A uniform framework for exemption decisions is needed now to avoid disrupting State and compact development of new disposal facilities close to Congressional milestones in 1993 and 1996. Such a framework may also facilitate the resolution of the mixed waste issues for these BRC wastes.

The policy described in this document is intended to provide the public health and safety protection framework that would apply to a wide spectrum of Commission exemption decisions. As such, it provides individual and collective dose criteria, and discusses other important elements of the exemption decision-making process. Section II provides definitions of key terms and concepts used in the policy statement. Section III presents the basic elements of the policy, while Section IV discusses how the policy will be implemented through rulemakings and licensing actions and describes how the public will have an opportunity to comment on the Commission's exemption decisions. This section also notes NRC plans to review past exemption decisions to ensure consistency with the risk framework described in the BRC policy. Section V describes, in general terms, the information needed to support the exemption decision-making process.

II. Definitions.

ALARA (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain radiation exposures as far below applicable dose limits as is practical, consistent with the purpose for which the licensed activity is undertaken taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations and in relation to utilization of nuclear energy and licensed materials in the public interest.

"Agreement State" means may State with which the Commission has entered into an effective agreement under

subsection 274(b) of the Atomic Energy Act of 1954, as amended.

Byproduct material means—

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

Collective doses is the sum of the individual doses (total effective dose equivalents) received in a given period of time by a specified population from exposure to a specifed source of radiation (or practice involving the use of radioactive material). Note: The calculated collective dose used to determine compliance with the criterion of this policy need not include individual dose contributions received at a rate of less than 0.1 mrem per year (0.001 mSv/year).

Committed effective dose equivalent is the sum of the products of weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to those organs or tissues.

Deep dose equivalent is the dose equivalent at a tissue depth of 1 cm.

Dose or *radiation dose* in this policy is the total effective dose equivalent.

Exemption from regulatory control refers to a decision process that may allow radioactive material to be transferred from a regulated status to an unregulated status, in which the material will no longer be subject to NRC requirements. Decisions to grant exemptions will be based upon findings by reason of quantity or concentration that the radioactive material poses a small risk to public health and safety and the environment and that the small magnitude of the risk does not warrant expenditure of additional resources of regulatory agencies and the regulated community in attempting to further reduce the risk.

Exposure means being exposed to ionizing radiation or to radioactive material.

Licensed material means source material, special nuclear material, or byproduct material that is received, possessed, used, transferred, or disposed of under a general or specific license issued by the Commission or an Agreement State.

Licensee means the holder of an NRC or Agreement State license.

Linear, no-threshold hypothesis refers to the theory that there is a proportional relationship between a given dose of radiation and the statistical probability of the occurrence of a health effect (such as latent cancers and genetic effects), and that there is no dose level below which there is no risk from exposure to radiation.

Natural background dose means the dose received from naturally occurring cosmic and terrestrial radiation and radioactive material but not from source, byproduct, or special nuclear material.

Practice is a defined activity or a set or combination of a number of similar coordinated and continuing activities aimed at a given purpose that involves the potential for radiation exposure. Disposal of specified types of very low level radioactive waste; the release for unrestricted public use, of lands and structures with residual levels of radioactivity; the distribution, use and disposal of specific consumer products containing small amounts of radioactive material; and the recycle and reuse of specific types of residually contaminated materials and equipment are examples of practices for which this policy will have potential applicability. (See Section III for further discussion of practice).

Rem is the special unit of dose equivalent (1 rem = 0.01 sievert).

Risk, for purposes of this policy, means the annual or lifetime probability of the development of fatal cancer from exposure to ionizing radiation and is taken as the product of the dose received by an exposed individual and a conversion factor based upon the linear, no-threshold hypothesis. The conversion factor for dose to risk is taken to be 5×10^{-4} fatal cancers per rem of radiation dose. The fatal cancer risk is considered, in general, to be more likely than other radiation induced health effects and to be the most severe outcome to an individual. While the Commission recognizes that the risks from exposure to radiation are greater for children than adults and that there are increased risks from exposure to the embryo/fetus, the estimate of fatal cancer risk for all ages and both sexes is considered to be an appropriate measure of risk from practices being considered for exemption in accordance with this policy statement (see Appendix).

Source material means—

(1) Uranium or thorium, or any combination of uranium and thorium in any physical or chemical form; or

(2) Ores which contain, by weight, one-twentieth of one percent (0.05 percent), or more, of uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

Special nuclear material means—

(1) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing but does not include source material.

Total effective dose equivalent means the sum of the deep dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures) expressed in rem or sievert.

III. Policy Elements

The purpose of this policy statement is to establish the risk framework within which the Commission will initiate the development of appropriate regulations or make licensing decisions to exempt certain practices from some or all regulatory controls. This policy is directed principally toward rulemaking activities but may be applied to license amendments or license applications involving the release of licensed radioactive material either to the environment or to persons who would be exempt from Commission regulations. In either case, opportunity for public comment will be provided with each rulemaking and each licensing action where generic exemptions provisions have not already been established.

It is the Commission's intent to broadly define specific practices so that the effect of an exemption decision on any individual or population will be evaluated in its entirety and not in a piecemeal fashion. At the same time, the practice must be identified and described in terms that will facilitate reasonable impact analyses and allow imposition of appropriate constraints, requirements, and conditions as the radioactive material passes from a regulated to an unregulated status (i.e., the material is no longer required to be under the control of a licensee). Under this policy, the definition of a "practice" in any specific decision (rulemaking or licensing action) is a critical feature. The NRC will ensure that formulation of exemptions from regulatory control will not allow deliberate dilution of material

or fractionation of the radiation or radioactive material for the purpose of circumventing controls that would otherwise be applicable. The definition of the practice in any specific exemption decision will also provide the framework for taking into account the potential effects of aggregated exposure from that practice together with other exempted practices, as well as the possible consequences of accidents or misuse or the potential for other nonstochastic radiological impacts associated with the exemption.

The Commission may determine on the basis of risk estimates and associated uncertainties that certain practices should not be considered candidates for exemption, such as the introduction of radioactive materials into products to be consumed or used primarily by children. Such practices should be specifically evaluated to determine if they could result in greater risk levels to exposed members of the public than the levels found acceptable by the Commission in formulating this policy. These decisions clearly fall within the Commission's purview to protect the health and safety of the public.

In formulating this policy statement, the Commission deliberated at length on the need to consider whether practices must be rigorously justified in terms of societal benefit regardless of the level of risk thay pose. Justification of practice is recognized by health physics professionals and national and international organizations as one of the three fundamental tenets of radiation protection (justification, dose limits, and ALARA). The Commission has prepared this policy statement in conformance with these basic tenets as appropriate for exemption decisions. Consistent with the position of the International Atomic Energy Agency in its Safety Series Report No. 89, the Commission believes that justification decisions usually derive from considerations that are much broader than radiation protection alone. The Commission believes that justification decisions involving social and cultural value judgments should be made by affected elements of society and not the regulatory agency. Consequently, the Commission will not consider whether a practice is justified in terms of net societal benefit.

A. Principles of Exemption

The principal consideration in exempting any practice from some or all regulatory controls hinges on the general question of whether the application or continuation of regulatory controls is necessary to protect the public health and safety and the environment. To decide if exemption is appropriate, the Commission must determine if adequate protection is provided and one of the following conditions is met:

1. The application or continuation of regulatory controls on the practice does not result in any significant reduction in dose received by individuals within a critical group (i.e., the group expected to receive the highest exposure) and by the exposed population; or

2. The costs of the controls that could be imposed for further dose reduction are not balanced by the potential commensurate reduction in risk.

At a sufficiently low level of risk, the Commission believes the decision-making process for granting specific exemptions from some or all regulatory controls can be essentially reduced to an evaluation of whether the overall individual and collective risks from each particular practice are sufficiently small. The Commission believes that individual and collective dose criteria should be basic features of its overall policy to define the region where the expenditure of Commission resources to enforce requirements for further dose reductions or licensee resources to comply with such requirements is no longer warranted. These specific criteria include (1) values for the individual annual dose reasonably expected to be received as a result of the practice (e.g., an average dose to individuals in a critical group) and (2) a measure of radiological impact to the exposed population. In combination, these criteria are chosen to ensure that, for the average dose to members of the critical population group from a given exempted practice, individuals will not be exposed to a significant radiological risk and that the population as a whole does not suffer a significant radiological impact.

It is important to emphasize that, in this policy, the Commission does not assert an absence or threshold of risk at low radiation dose levels but rather establishes a baseline level of risk beyond which further government regulation to reduce risks is unwarranted. As described in the Appendix to this policy statement, the technical rationale for the Commission's BRC criteria is explicitly based on the hypothesis that the risk from exposure to radiation is linearly proportional to the dose to an individual. However, the presence of natural background radiation and variations in the levels of this background have been used to provide a perspective from which to judge the relative significance of the radiological risks involved in the exemption decision-making process.

The Commission notes that adoption of the individual and collective dose criteria does not indicate a decision that doses above the criteria would necessarily preclude exemptions. The criteria simply represent a range of risk that the Commission believes is sufficiently small compared to other individual and societal risks that further cost-risk reduction analyses are not required in order to make a decision regarding the acceptability of an exemption. Practices not meeting these criteria may nevertheless be granted exemptions from regulatory control on a case-by-case basis in accordance with the principles embodied within this policy, if (1) the potential doses to individual members of the public are sufficiently small or unlikely; (2) further reductions in the doses are neither readily achievable nor significant in terms of protecting the public health and safety and the environment; and (3) the collective dose from the exempted practice is ALARA.

B. The Individual Dose Criterion

The Commission has noted that, although there is significant uncertainty in calculations of risks from low-level radiation, in general these risks are better understood than the risks from other hazards such as toxic chemicals. Moreover, radiation from natural background poses involuntary risks (primarily cancers), which must be accepted as a fact of life and are identical to the kinds of risks posed by radiation from nuclear materials under NRC jurisdiction. These facts provide a context in which to compare quantitatively the radiation risks from various practices and make radiation risk especially amenable to the use of the approach described below to define an acceptable BRC level.

The Commission believes that if the risk from doses to individuals from a practice under consideration for exemption is comparable to other voluntary and involuntary risks which are commonly accepted by those same individuals without significant efforts to reduce them, then the level of protection from that practice should be adequate. Furthermore, for risks at or below these levels there would be little merit in expending resources to reduce this risk further. The Commission believes the definition of a BRC dose level can be developed from this perspective.

Variations in natural background radiation apparently play no role in individuals' decisions on common matters such as places to live or work (e.g., the 60–70 mrem differences between average annual doses received

in Denver, Colorado versus Washington, D.C.). In addition, individuals generally do not seem to be concerned about the difference in doses between living in a brick versus a frame house, the 5 mrem dose received during a typical roundtrip coast-to-coast flight, or incremental doses from other activities that fall well within common variations in natural background radiation. These factors lead to the conclusion that differential risks corresponding to doses on the order of 5–10 mrem (0.05–0.1 mSv) are well within the range of doses that are commonly accepted by members of the public, and that this is an appropriate order of magnitude for the Commission's BRC individual dose criterion.

Although the uncertainties in risk estimates at such low doses are large, the risk to an individual as calculated using the linear, no-threshold hypothesis is shown in Table 1 for various defined levels of annual individual dose. The values in the hypothetical lifetime risk column are based on the further assumption that the annual dose is continuously received during each year of a 70-year lifetime. To provide further perspective, a radiation dose of 10 mrem per year (0.1 mSv per year) received continuously over a lifetime corresponds to a risk of about 4 chances in 10,000 (3.5×10^{-4}) or a hypothetical increase of about 0.25% in an individual's lifetime risk of fatal cancer. The Commission prefers to use factors of ten to describe such low individual doses because of the large uncertainties associated with the dose estimates. The Appendix to the policy statement provides a more complete discussion of the risks and uncertainties associated with low doses and dose rates.

TABLE 1

Incremental annual dose*	Hypothetical incremental annual risk**	Hypothetical lifetime risk from continuing annual dose**
100 mrem (1.0 mSv)	5×10^{-3}	3.5×10^{-3}
10 mrem (0.1 mSv)	5×10^{-4}	3.5×10^{-4}
1 mrem (0.01 mSv)	5×10^{-7}	3.5×10^{-5}
0.1 mrem (0.001 mSv)	5×10^{-6}	3.5×10^{-6}

* The expression of dose refers to the Total Effective Dose Equivalent. This term is the sum of the deep [whole body] dose equivalent for sources external to the body and the committed effective [whole body] dose equivalent for sources internal to the body.

** Calculated using a conservative risk coefficient of 5×10^{-4} per rem (5×10^{-2} per Sv) for low linear energy transfer radiation based on the results reported in "Sources, Effects and Risks of Ionizing Radiation," United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), 1988 Report to the General Assembly with Annexes and "Health Effects of Exposures to Low Levels of Ionizing Radiation, BEIR V," 1990, Committee on Biological Effects of Ionizing Radiation, National Research Council (see also NUREG/CR-4214, Rev. 1).

In view of the uncertainties involved in risk assessment at low doses and taking into account the aforementioned risk and dose perspectives, the Commission finds that the average dose to individuals in the critical group should be less than 10 mrem per year (0.1 mSv per year) for each exempted practice. In addition, an interim dose criterion of 1 mrem per year (0.01 mSv per year) average dose to individuals in the critical group will be applied to those practices involving widespread distribution of radioactive material in such items as consumer products or recycled material and equipment, until the Commission gains more experience with the potential for individual exposures from multiple licensed and exempted practices. These criteria provide individual dose thresholds below which continued regulatory controls are unnecessary and unwarranted to require further reductions in individual doses. The Commission considers these criteria to be appropriate given the uncertainties involved in estimating doses and risks, and notes that these criteria should facilitate straightforward implementation of this policy in future rulemakings or licensing decisions.

The Commission believes that, notwithstanding exemption of practices from regulatory control under these criteria, it still has reasonable assurance that exposures to individual members of the public from all licensed activities and exempted practices will not exceed 100 mrem per year (1 mSv per year) given the Commission's intent (1) to define practices broadly; (2) to evaluate potential exposures over the lifetime of the practice; (3) to evaluate the potential for aggregated exposures from multiple exempted practices; (4) to impose both individual and collective dose criteria; (5) to monitor and verify how exemptions are implemented under this policy; (6) to verify dose calculations through licensing reviews and rulemakings with full benefit of public review and comment; and (7) to inspect and enforce licensee adherence to specific constraints and conditions imposed by the Commission on exempted practices.

The Commission intends that only under unusual circumstances would exemptions be considered for practices that could cause continuing radiation exposure to individuals exceeding a small fraction of 100 mrem per year (1 mSv per year). In rare cases, exemptions of such practices may be granted if, after conducting a thorough analysis of the proposed exemption, the Commission determines that doses to members of the public are ALARA and that additional regulatory control is not warranted by further reductions in individual and collective doses.

C. The Collective Dose Criterion

The Commission believes that the collective dose (i.e., the sum of individual total effective dose equivalents) resulting from exposure to an exempt practice should be ALARA. However, if the collective dose resulting from an exempted practice is less than an expected value of 1000 person-rem per year (10 person-Sv per year), the resources of the Commission and its licensees could be better spent by addressing more significant health and safety issues than by requiring further analysis, reduction, and confirmation of the magnitude of the collective dose. The Commission notes that, at this level of collective dose, the number of hypothetical health effects calculated for an exempted practice on an annual basis would be less than one.

The National Council on Radiation Protection and Measurements recommends in its Report No. 91[1] that collective dose assessments for a particular practice should exclude consideration of those individuals whose annual effective dose equivalent is less than or equal to 1 mrem per year (0.01 mSv per year). In the sensitivity-of-measure, risk-based guidelines used by EPA and FDA, a 10^{-6} lifetime risk of cancer has been used as a quantitative criterion of insignificance. Using an annual risk coefficient of 5×10^{-4} health effects per rem (5×10^{-2} per sievert) as discussed in the Appendix, the 10^{-6} lifetime risk value would approximate the calculated risk that an individual would incur from a continuous lifetime dose rate in the range of 0.01 to 0.1 mrem (0.0001 to 0.001 mSv) per year.

As a practical matter, consideration of dose rates in the microrem per year range and large numbers of hypothetical individuals potentially exposed to an exempted practice may unduly complicate the dose calculations that will be used to support demonstrations that proposed exemptions comport with the criteria in this policy. The Commission believes that inclusion of individual doses below 0.1 mrem per year (0.001 mSv per year) introduces unnecessary complexity into collective dose assessments and could impute an unrealistic sense of the significance and

[1] Recommendations on Limits for Exposure to Ionizing Radiation, NCRP Report No. 91, National Council on Radiation Protection and Measurements, June 1, 1987. Available for purchase from NCRP Publications, 7910 Woodmont Ave., Suite 1016, Bethesda, MD 20814.

certainty of such dose levels. For all of these reasons, the Commission concludes that 0.1 mrem (0.001 mSv per year) is an appropriate truncation value to be applied in the assessment of collective doses for the purposes of this policy.

IV. Implementation

The Commission's BRC policy will be implemented principally through rulemakings; however, exemption decisions could also be implemented through specific licensing actions.

In the first case, a proposal for exemption, whether initiated by the NRC or requested by outside parties in a petition for rulemaking, must provide a basis upon which the Commission can determine if the basic policy criteria have been satisfied. The Commission intends to initiate a number of rulemakings on its own (e.g., to establish a dose criterion for decommissioning) and may initiate others as a result of NRC's review of existing codified exemptions (e.g., consumer product exemptions in 10 CFR parts 30 and 40). Rulemakings may also be initiated in response to petitions for rulemaking submitted by outside parties, such as a BRC waste petition submitted in accordance with Section 10 of the Low-Level Radioactive Waste Policy Amendment Act of 1985. In general, rulemaking exemption proposals should assess the potential health and safety impacts that could result if the exemption were to be granted.

The proposal should consider the uses of the radioactive materials, the pathways of exposure, the levels of radioactivity, and the methods and constraints for ensuring that the assumptions used to define a practice remain appropriate as the radioactive materials move from a regulated to an unregulated status. Any such rulemaking action would follow the Administrative Procedure Act, which requires publication of a proposed rule in order to solicit public comment on the rulemaking action under consideration. The rulemaking action would include an appropriate level of environmental review in accordance with the Commission's regulations in 10 CFR part 51, which implement the National Environmental Policy Act.

If a proposal for exemption results in a Commission regulation containing specific requirements for a particular exemption, a licensee using the exemption would no longer be required to apply the ALARA principle to reduce doses further for the exempted practice provided that it meets the conditions specified in the regulation. The promulgation of the regulation would, under these circumstances, constitute a finding that the practice is exempted in accordance with the provisions of the regulation and that ALARA considerations have been adequately addressed from a regulatory standpoint. The Commission in no way wishes to discourage the voluntary application of additional health physics practices which may, in fact, reduce actual doses significantly below the BRC criteria or the development of new technologies to enhance protection to public and the environment. This is particularly pertinent in the area of decontamination and decommissioning, where the Commission anticipates that emerging technologies over the next several decades should enhance existing technical capabilities and further reduce doses to workers and the public and where other federal agencies are in the process of developing standards which may affect those receiving exemptions.

The second means of policy implementation could involve exemptions that would be granted through licensing actions, such as determinations that a specific site has been sufficiently decontaminated to be released for unrestricted public use. The NRC intends to develop guidance regarding the implementation of the BRC criteria to ensure that such site-specific actions adhere to the criteria and principles of this policy statement. New licensing actions that transfer radioactive material to an unregulated status will be noticed in the **Federal Register** if they differ from previous generic exemption decisions.

One of the principal benefits of the policy is that it provides a framework to evaluate and ensure the consistency of past exemption decisions by the Commission. With the adoption of this BRC policy, the NRC will initiate a systematic assessment of exemptions currently existing in NRC's regulations to ensure that the public is adequately and consistently protected from the risks associated with exempted practices. In addition, the NRC will, on a periodic basis, review the exemptions granted under this policy to ensure that the public health and safety continue to be protected adequately.

V. Information To Support Exemption Decisions

A. General

The information required to support an exemption decision in a rulemaking or licensing action should provide the basis for the proposed exemption in accordance with Section III of this policy. In addressing the radiological health and safety impacts, potential individual and collective doses attributed to the practice under consideration should either meet the policy's dose criteria or otherwise be demonstrated to be low enough to ensure protection of the public health and safety and ALARA. In addition to the impacts of routine exposures, realistic impacts resulting from potential misuse or accident scenarios should also be evaluated and demonstrated to be insignificant. The NRC may reject proposals for exemptions if they do not provide a sufficient technical basis to support analysis of the potential exemption.

Practices should be defined with respect to the geographic and demographic areas to which the exemption will apply. In some cases, an exemption will be limited to one particular locality or area. However, many practices will have national applicability and should be characterized accordingly. Information on these issues will be necessary for determinations regarding which individual dose criterion should be applied.

The Commission believes that the implementation guidance provided with its "General Statement of Policy and Procedures Concerning Petitions Pursuant to § 2.802 for Disposal of Radioactive Waste Streams Below Regulatory Concern," published August 29, 1986, 51 FR 30839, generally defines the types of information needed to support an exemption decision. However, not all of the information may be applicable to the broader range of practices considered for exemption under this policy. Applicants should examine potentially relevant guidance available at the time the exemption proposal is being prepared and provide the information which is relevant to the particular type of exemption decision being requested.

B. Material Characterization

1. *Radiological properties.* The radiological properties of the materials to be exempted should be described, including, as appropriate, the concentration or contamination levels and the half-lives, total quantities, and identities of the radionuclides associated with the exempted practice. The chemical and physical form of the radionuclides should be specified. All radionuclides present or potentially present should be specified. The distribution of the radionuclides should be noted (e.g., surface or volume distribution). Mass- and volume-averaged concentrations should also be presented. The variability of

radionuclide concentration, distribution, or type as a function of process variation or variations among licensees should be addressed and bounded, as appropriate.

2. *Nonradiological properties.* The nonradiological properties of the materials to be exempted should be described to ensure complete characterization of the properties of the material and consideration of any adverse impacts associated with these properties. An NRC exemption, based on radiological impacts, would not relieve licensees from compliance with applicable rules of other agencies which cover nonradiological properties. A description of the materials, including their origin, chemical composition, physical state, volume, and mass should be provided. The variability and potential changes in the materials as a function of process variation should be addressed. The variation among licensees should be described and bounded, as applicable.

C. Practice Characterization

1. *Total impact.* A regulatory action taken under this policy is likely to be generic and may be nationwide in scale. Therefore, to the extent possible, an estimate of the number of NRC and Agreement State licensees that possess the radioactive material considered for exemption, the annual volumes and masses, and the total quantities of each radionuclide that would be a part of the exempted practice should be given. The estimates should include the current situation and the likely variability over the reasonably foreseeable future. A geographical description would be a helpful tool in characterizing the distribution of radioactive material involved in the exemption decision. Such distribution, submitted as part of the practice characterization, should be used to assess realistic impacts of the practice, in addition to conservative bounding estimates that tend to overestimate human exposures and doses. In any case, the typical quantities produced per practice (e.g., number of units of a particular consumer product) and an estimate of the geographic description of the practice should be described. The potential for short- and long-term recycle or reuse of the product containing the exempted radioactive material should also be addressed. Both the resource value (e.g., salvageable metals) and the functional usefulness (e.g., usable tools) should be examined.

2. *Basis for assessment.* A description of bases for the materials and practice characterizations should be provided. Monitoring and analytical data and calculations should be specified and provided in support of the characterization. Actual measurements or values that can be related to measurements to confirm calculations are important and should be provided. The description should address the quality assurance program used in data collection and analysis and supporting information. If any surveys were conducted, they should be described. Market information may be useful in characterizing a practice on a national basis.

3. *As low as is reasonably achievable (ALARA).* An analysis should be provided that demonstrates that radiation exposure and radionuclide releases associated with the exempted practice overall will be ALARA consistent with the criteria in this policy. The ALARA principle referred to in 10 CFR Part 20 applies to efforts by licensees to maintain radiation exposures and releases of radioactive materials to unrestricted areas as low as is reasonably achievable. Appendix I to 10 CFR Part 50 describes ALARA for radioactive material releases from light water reactors (nuclear power plants). Exemption proposals should describe how ALARA considerations have been applied in the design, development, and implementation of controls for the proposed practice. Licensee compliance with the ALARA principle must remain in effect up to and including the point at which the materials are transferred to an unregulated status in accordance with an exemption granted under this policy.

D. Impact Analyses

To support and justify a request for exemption, each petitioner or licensee should assess the radiological and nonradiological impacts of the proposed exemption. The analyses should be based on the characterizations described previously and should cover all aspects of the proposed exempt practice, including possession, use, transfer, ownership, and disposal of the material. NRC consideration of the exemption proposal and any environmental assessments and regulatory analyses required to implement the exemption will be based on the impact analyses and supporting characterizations.

1. *Radiological impacts.* The evaluation of radiological impacts should clearly address the policy's individual and collective dose criteria or provide a sufficient ALARA evaluation supporting the exemption. In either case, the following impacts should be assessed:

—Average doses to the critical population group;
—Collective doses to the critical population group and the total exposed population (under conditions defined in Section III); and
—The potential for and magnitude of doses associated with accidents, misuses, and reconcentration of radionuclides.

The collective doses should be estimated and summed in two parts: total dose to the critical population group and total dose to the exposed population. The critical group is the relatively homogeneous group of individuals whose exposures are likely to be the greatest and for whom the assessment of doses is likely to be the most accurate. Average doses to this group are the controlling factors limiting individual doses and risk, and should be compared with the individual dose criteria, as appropriate. The critical group should be the segment of the population most highly exposed to radiation or radioactive materials associated with the use of radioactive material under unregulated conditions. The second part of the population exposure is the general population exposure, exclusive of critical group exposure. For this group, the individual exposures should be smaller, and the assessment will often be less precise. The impacts analysis should present an estimate of the distribution of doses within the general population. In situations where truncation of the collective dose calculation is done under the provisions of this policy, the basis for applying the truncation provision should be provided.

The evaluation of radiological impacts should distinguish between expected and potential exposures and events. The analysis of potential exposures in accident or misuse scenarios should include all of the assumptions, data, and results used in the analysis in order to facilitate review. The evaluation should provide sufficient information to allow a reviewer to independently confirm the results. The potential for reasonable interactions between the exempted radioactive material and the public should be assessed.

2. *Other impacts.* The analysis of other radiological impacts such as those from transportation, handling, processing, and disposal of exempted materials should be evaluated. Nonradiological impacts on humans and the environment should also be evaluated in accordance with NRC requirements in 10 CFR Part 51. The analsyis should also consider any adverse impact of the measures taken to

provide nonradiological protection on radiation exposure and releases of radioactive material. Any NRC action to exempt a practice from further regulatory control would not relieve persons using, handling, processing, owning, or disposing of the radioactive material from other requirements applicable to the nonradiological properties of the material.

E. Cost-Benefit Considerations (As Required)

A cost/benefit analysis is an essential part of both environmental and regulatory impact considerations. The analysis should focus on expected exposures and realistic concentrations or quantities of radionuclides. The cost/benefit analysis should compare the exposures and economic costs associated with the regulated practice and alternatives not subject to regulation. Benefits and costs should be considered in both quantitative and qualitative terms. Costs of surveys and compliance verification discussed under Item V.G. should also be covered. Any legal or regulatory constraints that might affect an exemption decision should be identified. For example, one such constraint might stem from Department of Transportation (DOT) requirements for labeling, placarding, and manifesting radioactive materials in 49 CFR part 173.

F. Constraints, Requirements, or Conditions on Exemptions

In most cases, the characterizations of the material and the assessment of impacts will be based on either explicit or implicit constraints, such as limitations on the amount of radioactive material in a consumer product. In order for an exemption decision to take credit for these constraints, the exemption proposal should specifically identify appropriate constraints, such as quantity limits, concentration limits, and physical form characteristics. The bases on which these constraints are to be ensured should also be discussed. In general, constraints should be verifiable in order to provide the basis for an exemption decision.

G. Quality Assurance and Reporting

This portion of the exemption proposal should be tailored to either a generic petition for rulemaking or specific proposal for a license amendment. For generic petitions for rulemaking, the proposal should provide and justify generic requirements for Quality Assurance/Quality Control and Reporting. Such proposals should include example requirements and show their effectiveness and feasibility. For site-specific license amendments, the exemption proposal should provide specific requirements for Quality Assurance/Quality Control and Reporting that have been tailored to the licensee's program.

1. Quality assurance/quality control. The program to ensure compliance with specific exemption constraints, requirements, or conditions should be defined. The records of inventory, tests, surveys, and calculations used to demonstrate compliance with the exemption constraints should be maintained for inspection. Such programs are necessary to provide the NRC and the public reasonable assurance of conformance with the constraints and of adequate protection of human health and the environment.

2. Reports. Reports may be required from licensees who, by rule or license, are permitted to release materials exempted from regulatory control. Associated recordkeeping to generate the reports should be defined. Minimum information in the reports could include volume, isotope and curie content. More detailed recordkeeping and reporting requirements may be imposed to address uncertainties in projecting future volumes or amounts of exempted materials and to consider the cumulative impacts of multiple exemptions.

Appendix—Dose and Health Effects Estimation

I. Dose Estimation

In estimating the dose rates to members of the public that might arise through various practices for which exemptions are being considered, the Commission has decided to apply the concept of the "total effective dose equivalent." This concept, which is based on a comparison of the delayed health effects of ionizing radiation exposures, permits the calculation of the whole body dose equivalent of partial body and organ exposures through use of weighting factors. The concept was proposed by the International Commission on Radiological Protection (ICRP) in its Publication 26 issued in 1977. Since that time, the concept has been reviewed, evaluated, and adopted by radiation protection organizations throughout the world and has gained wide acceptance. The "total effective dose equivalent" concept is incorporated in "Radiation Protection Guidance to Federal Agencies for Occupational Exposure—Recommendations Approved by the President," that was signed by the President and published in the Federal Register on January 27, 1987 (52 FR 2822). The Commission recognizes that, in considering specific exemption proposals, the total effective dose equivalent must be taken into account.

II. Estimating Health Effects From Radiation Exposure

A. Individual Risks

In the establishment of its radiation protection policies, the Commission has considered the three major types of stochastic (i.e., random) health effects that can be caused by relatively low doses of radiation: cancer, genetic effects, and developmental anomalies in fetuses. The NRC principally focuses on the risk of fatal cancer development because (1) the mortality risk represents a more severe outcome than the nonfatal cancer risk, and (2) the mortality risk is thought to be higher than the risk associated with genetic effects and developmental effects on fetuses.[2] However, even though radiation has been shown to be carcinogenic, the development of a risk factor applicable to continuing radiation exposures at levels equal to natural background [3] requires a significant extrapolation from the observed effects at much higher doses and dose rates.[4] This results in significant uncertainty in risk estimates as reflected by the views of experts in the field. For example, the Committee on the Biological Effects of Ionizing Radiation (BEIR III) of the National Academy of Science cautioned that the risk values are "* * * based on incomplete data and involve a large degree of uncertainty, especially in the low dose region." This Committee also stated that it "* * * does not know whether dose rates of gamma or x-rays

[2] Further discussion of these topics is provided in "Sources, Effects and Risks of Ionizing Radiation," United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), 1988 Report to the General Assembly with Annexes.

[3] Natural background radiation can vary with time and location. In Washington, DC, natural background radiation (excluding radon) results in individual doses of about 90 mrem per year (0.9 mSv/yr), while in Denver, Colorado, the value is about 160 mrem per year (1.6 mSv/yr). In both cases, naturally occurring radioactive material in the human body contributes approximately 40 mrem per year. Radiation from inhalation of the daughter products of radon contributes an average additional dose of 200 mrem per year (2 mSv/yr) to members of the U.S. population (NCRP Report No. 93, "Ionizing Radiation Exposure of the Population of the United States").

[4] The health effects clearly attributable to radiation have occurred principally among early radiation workers, survivors of the atomic bomb explosions at Hiroshima and Nagasaki, individuals exposed for medical purposes, and laboratory animals. Natural background radiation causes an annual dose that is at least two orders of magnitude less than the dose received by human populations from which the cancer risks are derived. Experiments at the cellular level, however, provide similar indications of biological effects at low doses.

(low LET; low linear energy transfer radiation) of about 100 mrads/year (1 mGy/year) are detrimental to man." More recently, the BEIR V Committee of the National Academy of Science/ National Research Council stated that it "recognizes that its risk estimates become more uncertain when applied to very low doses. Departures from a linear model at low doses, however, could either increase or decrease the [estimation of] risk per unit dose." The Commission understands that the Committees' statements reflect the uncertainties involved in estimating the risks of radiation exposure and do not imply either the absence or presence of detrimental effects at such low dose levels.

The United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) stated in their 1988 Report to the General Assembly that "* * * there was a need for a reduction factor to modify the risks (derived at high doses and dose rates)." * * * for low doses and dose rates * * * [A]n appropriate range (for this factor) to be applied to total risk for low dose and dose rate should be between 2 and 10." This factor would lead to a risk coefficient value between 7×10^{-5} and 3.5×10^{-4} per rad (7×10^{-3} 3 and 3.5×10^{-2} per Gy) based on an UNSCEAR risk coefficient of 7.1×10^{-4} per rad (7.1×10^{-2} per gray) for 100 rad (1 gray) organ absorbed doses at high dose rates. The report also stated, "The product of the risk coefficient appropriate for individual risk and the relevant collective dose will give the expected number of cancer deaths in the exposed population, provided that the collective dose is at least of the order of 100 person-Sv (10,000 person-rem). If the collective dose is only a few person-Sv (a few hundred person-rem), the most likely outcome is zero deaths." In December 1989, the BEIR V Committee published a report entitled "Health Effects of Exposure to Low Levels of Ionizing Radiation," which contained risk estimates that are, in general, similar to the findings of the 1988 UNSCEAR report. The BEIR V report's estimate of lifetime excess risk of death from cancer following an acute dose of 10 rem (0.1 Sv) of low-LET radiation was 8×10^{-3}. Taking into account a dose rate effectiveness factor for doses occurring over an extended period of time, the risk coefficient is on the order of 5×10^{-4} per rem, consistent with the upper level of risk estimated by UNSCEAR.

In view of this type of information, the NRC, the Environmental Protection Agency, and other national and international radiation protection authorities have established radiation protection standards defining recommended dose limits for radiation workers and individual members of the public. As a matter of regulatory prudence, all these bodies have derived the value presumed to apply at lower doses and dose rates associated with the radiation protection standards by a linear extrapolation from values derived at higher doses and dose rates. This model is frequently referred to as the linear, no-threshold hypothesis, in which the risk factor at low doses reflects the straight-line (linear) dose-effect relationship at much higher doses and dose rates. In this respect, the BEIR V report notes that "in spite of evidence that the molecular lesions which give rise to somatic and genetic damage can be repaired to a considerable degree, the new data do not contradict the hypothesis, at least with respect to cancer induction and hereditary genetic effects, that the frequency of such effects increases with low-level radiation as a linear, non-threshold function of the dose."

The Commission, in the development of the BRC policy, is faced with the issue of how to characterize the individual and population risks associated with low doses and dose rates. Although the uncertainties are large, useful perspective on the bounding risk associated with very low levels of radiation can be provided by the linear, no-threshold hypothesis. Consequently, such risk estimates have been a primary factor in establishing individual and collective dose criteria associated with this policy. The estimations of the low risk from potentially exempted practices can be compared to the relatively higher potential risks associated with other activities or decisions over which the NRC has regulatory responsibility. Through such comparisons, the Commission can ensure that its radiation protection resources and those of its licensees are expended in an optimal manner to accomplish its public health and safety mission.

In this context, the risk to an individual as calculated using the linear, no-threshold hypothesis is shown in Table 1 for various defined levels of annual individual dose. The values in the hypothetical lifetime risk column are based on the further assumption that the annual dose is continuously received during each year of a 70-year lifetime. To provide further perspective, a radiation dose of 10 mrem per year (0.1 mSv per year) received continuously over a lifetime corresponds to a hypothetical increase of about 0.25% in an individual's lifetime risk of cancer death. Ten millirem per year (0.1 mSv per year) is also a dose rate that is a small fraction of naturally occurring background radiation and comparable to the temporal variations in natural background radiation due to fluctuations that occur at any specific location.

TABLE 1

Incremental annual dose [1]	Hypothetical incremental annual risk [2]	Hypothetical lifetime risk from continuing annual dose [2]
100 mrem (1.0 mSv)	5×10^{-3}	3.5×10^{-2}
10 mrem (0.1 mSv)	5×10^{-4}	3.5×10^{-3}
1 mrem (0.01 mSv)	5×10^{-7}	3.5×10^{-5}
0.1 mrem (0.001 mSv)	5×10^{-6}	3.5×10^{-6}

[1] The expression of dose refers to the Total Effective Dose Equivalent. This term is the sum of the deep [whole body] dose equivalent for sources external to the body and the committed effective [whole body] dose equivalent for sources internal to the body.

[2] Risk coefficient of 5×10^{-4} per rem (5×10^{-2} per Sv) for low linear energy transfer radiation has been conservatively based on the results reported in UNSCEAR 1988 (Footnote 2) and BEIR V (see also NUREG/CR-4214, Rev. 1).

The Commission prefers to use factors of ten to describe such low individual doses because of the large uncertainties associated with the dose estimates. Use of values such as 0.7 or 12 imputes a significance and sense of certainty that is not justified considering the levels of uncertainty in the dose and risk estimates at these low levels. Thus, order of magnitude values such as 1 and 10 are preferable to avoid providing analysts and the public with a sense of certainty and significance that is not commensurate with the actual precision and certainty of the estimates.

B. Collective or Population Risk

In the application of the fundamental principles of radiation protection, collective dose provides a useful way to express the radiological impact (i.e., potential detriments) of a practice on the health of the exposed population. Because of the stochastic nature of risk, analysis of exposures of large groups of people to very small doses may result in calculated health effects in the population at large. Collective dose is the sum of the individual total effective dose equivalents resulting from a practice or source of radiation exposure. It is used in comparative cost-benefit and other quantitative analytical techniques and, therefore, is an important factor to consider in balancing benefits and societal detriments in applying the ALARA principle. For purposes of this policy, individual total effective dose

equivalents less than 0.1 mrem per year (0.001 mSv per year) do not need to be considered in the estimation of collective doses. The Commission believes consideration of individual doses below 0.1 mrem per year imputes a sense of significance and certainty of their magnitude that is not justified considering the inherent uncertainties in dose and risk estimates associated with potentially exempted practices. The Commission also notes that doses in the range of 0.01 to 0.1 mrem per year correspond approximately to lifetime risks on the order of one in a million. The NRC has used collective dose, including rationales for its truncation, in a number of rulemaking decisions and in resolving a variety of generic safety issues.

III. Dose and Risk Estimation

The Commission recognizes that it is frequently not possible to measure risk to individuals or populations directly and, in most situations, it is impractical to measure annual doses to individuals at the low levels associated with potential exemption decisions. Typically, radionuclide concentrations or radiation dose rates can only be measured before the radioactive material is released from regulatory control. Estimates of doses to members of the public from the types of practices that the Commission would consider exempting from regulatory control must be based on input of these measurements into exposure pathway models, using assumptions related to the ways in which people might become exposed. These assumptions incorporate sufficient conservatism to account for uncertainties so that any actual doses would be expected to be lower than the calculated doses.The Commission believes that this is an appropriate approach to be taken when determining if an exemption from some or all regulatory controls is warranted.

The additional views of Commissioner Curtiss and Chairman Carr's response are attached.

Dated at Rockville, Maryland, this 22d day of June, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Additional Views of Commissioner Curtiss

I strongly endorse going forward with a comprehensive policy that will establish a disciplined and consistent framework within which the Commission can define those practices that, from the standpoint of radiological risk, we consider to be below regulatory concern (BRC). The principal advantage of such a policy, in my view, is that it will bring much-needed discipline and technical coherence to the patchwork of BRC regulatory decisions that have been rendered to date, providing a clearly-articulated, risk-based approach for reaching decisions on matters such as—(1) the release for unrestricted public use of lands and structures containing residual radioactivity; (2) the distribution of consumer products containing small amounts of radioactive material; (3) the disposal of very low-level radioactive waste; and (4) the recycling of slightly contaminated equipment and materials. A coherent, risk-based policy is urgently needed to provide the foundation for future regulatory actions in each of these areas. Accordingly, I strongly support this initiative.

There are certain aspects of this policy, however, with which I must reluctantly disagree. My views on these matters follow:

Individual Dose Criteria

I support the individual dose criteria of 10 millirem per year for practices involving potential exposures to limited numbers of the public and 1 millirem per year for widespread practices that involve potential exposures to large numbers of the public. In view of the potential for multiple exposures from widespread practices, however, and in the interest of administrative finality, I believe that the Commission should establish the 1 millirem criterion as a final criterion, rather than an interim value.

Collective Dose Criterion

I do not support the establishment of a collective dose criterion at a level of 1000 person-rem. This level is an order of magnitude higher than the level recommended in IAEA Series No. 89, as well as the level recommended by most other international groups. Furthermore, it is an order of magnitude higher than the 1986 collective dose to members of the public due to effluents from all operating reactors, the most recent year for which figures are available.

A collective dose criterion of 1000 person-rem would mean, for example, that if, pursuant to this Policy Statement, the Commission were to exempt on the order of fifteen separate practices with collective doses at or near the exemption level of 1000 person-rem—not an unreasonable expectation, given previous practice—we would project somewhere between 5 and 10 excess health effects annually. I consider this level to be unacceptably high, when viewed in the context of other risks that we regulate and in view of the fact that the purpose of this Policy Statement is to establish a framework for identifying those practices that the Commission considers to be below regulatory concern.

Beyond this, if the collective dose criterion is to be defined as the floor to ALARA (as I would propose below), a more conservative approach to establishing a collective dose criterion is warranted in view of the fact that doses may be truncated in the calculation of collective dose and the collective dose criterion may be applied to single licensing actions.

For these reasons, I do not support a collective dose criterion of 1000 person-rem. Instead, in view of what appears to be the prevailing technical view on this matter, I would endorse a collective dose criterion of 100 person-rem.[1]

ALARA

I would define the individual and collective dose criteria as floors to ALARA.[2] Unfortunately, the Policy Statement is equivocal on this issue, suggesting at one point that the individual and collective dose criteria should be construed as floors to ALARA—

[A] licensee * * * would no longer be required to apply the ALARA principle to reduce doses further for the exempted practice provided that it meets the conditions specified in the regulation.

but then going on to send what I consider to be a conflicting and confusing message about what the Commission expects—

The Commission in no way wishes to discourage the voluntary application of additional health physics practices which may, in fact reduce actual doses below the BRC criteria or the development of new technologies to enhance protection to public and the environment. (emphasis added)

If the Commission intends to say, as I believe it does in this Policy Statement, that those practices that fall within the individual and collective dose critera can be designated below regulatory

[1] I would point out that the Policy Statement allows higher collective doses if analyses show that the collective dose is ALARA for a given practice. Therefore, adoption of the lower IAEA value of 100 person-rem based on dollar estimates of resources to do detailed ALARA analyses would not eliminate the option to approve practices such as smoke detectors that involve large numbers of potentially exposed members of the public.

[2] By "floor to ALARA", I mean that the petitioner and the staff are relieved from the regulatory obligation to perform further ALARA analyses below these levels if individual doses are 1 millirem/10 millirem *and* the collective dose is 100 person-rem.

concern, it is unclear why the Commission would then go on to say that it expects additional steps to be taken to keep exposures ALARA. As a general matter, I do not object to the ALARA concept. Indeed, I support the notion that collective dose and ALARA analyses should be performed in a manner that is consistent with basic national and international radiation protection principles. But in the context of a Policy Statement on Below Regulatory Concern, for the Commission to say on the one hand that the individual and collective dose criteria reflect levels below which no regulatory resources should be expended, while at the same time encouraging voluntary ALARA efforts to achieve lower doses sends a confusing regulatory message.[3] For the sake of regulatory clarity, I would explicitly identify the individual and collective dose criteria as floors to ALARA.

Justification of Practice

On the issue of justification of practice, the Policy Statement is unclear as to when and under what circumstances the justification of practice principle would be applied. At one point, the Policy Statement provides that:

> The Commission believes that justification decisions involving social and cultural value judgments should be made by affected elements of society and not the regulatory agency. Consequently, the Commission will not consider whether a practice is justified in terms of net societal benefit.

At another point, the Policy Statement indicates that:

> The Commission may determine on the basis of risk estimates and associated uncertainties that certain practices should not be considered candidates for exemption, such as the introduction of radioactive materials into products to be consumed or used primarily by children.

This bifurcated approach to justification of practice, which appears to distinguish practices involving children from all other practices, will inevitably lead to confusion. Moreover, this approach poses the very real potential that the Commission could, on the one hand, reject a practice involving children (*e.g.*, baby food, pacifiers, and the like) on the ground that the risk posed by such a practice is too high, yet authorize a practice directed at the general public that could, coincidentally, expose an even greater number of children, even though the practice itself is not specifically directed at children.

In my view, this ambigutiy should be resolved in favor of a clear and unequivocal statement endorsing the principle of justification of practice. While I acknowledge that the principle of justification of practice calls upon the Commission to make decisions involving so-called questions of "societal value", that is an insufficient reason, in my view, to step back from this widely-accepted health-physics principle. Indeed, the Commission already takes such considerations into account, either explicitly or implicitly, in many of the decisions that it renders.

Accordingly, in view of the central role that the justification of practice principle has played in health physics practice, as well as the complexity and confusion that will invariably result from the approach set forth in the Policy Statement, I would state explicitly in this Policy Statement that the Commission retains the prerogative to determine that specific practices may be unsuitable for exemption, regardless of risk, documenting such determinations on a case-by-case basis.

Agreement State Compatibility

With one exception, I concur in the general approach that this Policy Statement takes on the issue of Agreement State compatibility. The one area where I disagree involves the treatment of matters involving low-level radioactive waste disposal.

As I understand the position of the majority, the approach established in this Policy Statement, and to be implemented in the context of subsequent rulemaking initiatives, will be considered a matter of strict compatibility for Agreement State programs. As a consequence, the approach taken by individual Agreement States on BRC issues must be identical to the approach taken by the Commission. I disagree with this approach for the following reasons:

When Congress enacted the Low Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), it vested in the states the responsibility for developing new low-level radioactive waste disposal capacity. Indeed, the Congress recognized at the time that the states were uniquely equipped to handle this important responsibility. Accordingly, the states were given a great deal of latitude in deciding how best to proceed with the development, construction, and operation of new low-level waste disposal facilities. To take one example, Congress recognized that some states may decide to construct facilities that, from a technical standpoint, go beyond the requirements established in 10 CFR Part 61 for shallow land burial facilities; for this reason, Congress directed the NRC to develop guidance on alternatives to the shallow land burial approach reflected in Part 61 (see section 8 of P.L. 99-240). Similarly, should a State decide to require radioactive wastes beyond those defined by the NRC as Class A, B, and C wastes to be disposed of in a regional disposal facility, the Act permits the states that option as well (see section 3(a)(2) of P.L. 99-240).[4] In short, the LLRWPAA grants states a great deal of latitude in deciding what kind of facility to build and what types of waste will be disposed of in that facility, so long as—(1) the facility complies with the requirements of 10 CFR Part 61; and (2) the State provides disposal capacity for Class A, B, and C wastes.

If one interprets the LLRWPAA in this manner, as I do, then in my judgment it is consistent with this general approach to conclude that this Policy Statement (and the subsequent rulemaking initiatives implementing the Policy Statement) should not be considered matters of compatibility. The result of such an approach would be that individual states would be allowed the option of deciding whether low-level wastes designated BRC by the Commission under this Policy Statement should nevertheless be disposed of in a licensed low-level radioactive waste disposal facility.

The argument, as I understand it, that is advanced in support of the approach taken in the Policy Statement—that the Commission's position on BRC should be a matter of compatibility—is that states should be foreclosed from departing in any way from the approach established by the Commission. To take the most visible and controversial example that has arisen to date, this would lead to the result that a State could not require that low-level waste streams designated BRC by the Commission nevertheless be disposed of in a licensed low-level radioactive waste disposal facility.

---

[3] I am also concerned that the approach to ALARA set forth in the Policy Statement appears to be motivated, in part, by a concern that the Environmental Protection Agency may at some future point set more stringent criteria for BRC. Of particular note is the statement that—

> This [approach to ALARA] is particularly pertinent in the area of decontamination and decommissioning * * * where other federal agencies are in the process of developing standards which may affect those receiving exemptions.

In my view, the ALARA issue should be approached with the objective of formulating a sound and defensible policy, rather than with an eye towards trying to anticipate what policy EPA might establish in the future.

[4] Indeed, the Commission did not object when the Rocky Mountain compact proposed to dispose of radium waste in the Rocky Mountain compact site.

I am not aware of any public health and safety rationale involving low-level waste disposal that has been advanced as a basis for the NRC to insist that the Commission's position on BRC should be a matter of compatibility for Agreement States. One hears the anecdotal information about reducing exposures to truck drivers by allowing BRC waste streams to be disposed of in local landfills, rather than requiring such waste to be transported across the country to a licensed low-level waste disposal facility. If examples such as this constitute the basis for declaring that a health and safety concern exists such that the Commission should, in turn, prohibit a State from requiring such waste to be disposed of in a licensed low-level waste disposal facility, then a more disciplined and persuasive presentation of the argument is needed. To date, I have yet to see such a case.[5] In the absence of a health and safety concern, it is incongruous, in my judgment, to say that the risk from a particular waste stream can be so insignificant as to be "below [NRC's] regulatory concern", but at the same time insist that we nevertheless have a sufficient interest to dictate how a State might otherwise wish to handle that waste stream.[6]

For the foregoing reasons, I would not treat the federal policy on below regulatory concern, as set forth in this Policy Statement and subsequent rulemakings, as a matter of compatibility for Agreement States when it comes to issues involving commercial low-level radioactive waste disposal.

Chairman Carr's Response to Commissioner Curtiss' Views on the BRC Policy Statement

I am proud of the Commission's accomplishment in completing a comprehensive Below Regulatory Concern policy statement. I appreciate Commissioner Curtiss' enthusiasm and strong support for the policy. Commission deliberation of such views has helped to forge a comprehensive risk framework for ensuring that the public is protected at a consistent level of safety from existing and future exemptions and releases of radioactive materials to the general environment. The framework should also be helpful in allowing NRC, States, and the public to focus resources on reducing the more significant risks under NRC's jurisdiction. I offer the following response to Commissioner Curtiss' thoughtful views in the spirit of the constructive process that has culminated in the BRC policy.

As with many of the issues that the Commission deals with, there were very few right and wrong solutions to the issues associated with the BRC policy. The Commission reached its decisions on the policy by selecting preferred solutions from among a spectrum of possible policy options. These decisions were made based on the Commission's technical analysis of the issues associated with regulatory exemptions, legal interpretation of governing legislation, and regulatory experience in approving exemptions since the birth of civilian uses of nuclear materials in the 1950's. I believe Commissioner Curtiss' views on selected issues constitute part of the continuous spectrum of policy options. However, for the reasons articulated below, I affirm the Commission's decision to approve the policy statement in its present form and reject the differing views put forth by Commissioner Curtiss.

Commissioner Curtiss clearly endorses the policy and the concept of establishing a comprehensive framework for making decisions on regulatory exemptions. However, he takes issue with five elements of the policy: (1) The interim nature of the 1 millirem per year criterion for practices with widespread distribution, (2) selection of the 1000 person-rem per year criterion for collective dose, (3) the manner in which the Commission views the BRC criteria as a "floor" to ALARA, (4) omission of the principle of justification of practice, and (5) making BRC rules an item of compatibility for Agreement State programs. These issues were fully considered by the Commission and the NRC staff in the course of developing the BRC policy. Indeed, Commissioner Curtiss voted in September 1989 to approve the BRC policy, the essence of which is preserved in the final BRC policy in today's notice.

Interim Individual Dose Criterion

On the first issue, Commissioner Curtiss would prefer to establish the 1 millirem per year criterion as a final criterion, rather than an interim value.

As stated in the BRC policy, the Commission is establishing the 1 millirem per year criterion as an interim value until after it develops more experience with the potential for individual exposures from multiple licensed and exempted practices. The widespread practices to which this criterion applies are primarily consumer products, which could involve very small doses to large numbers of people. The 1 millirem criterion was selected specifically to address the possibility that members of the public may be exposed to several exempted practices.

Simply put, exposure of an individual to a handful of exempted practices could result in annual doses close to 100 millirem if each practice were allocated individual doses up to 10 millirem per year. This is highly improbable given the Commission's plans to closely monitor any overlap of exposed populations from exempted practices as well as the aggregate dose to the public from exemptions. Nevertheless, NRC does not presently know how many exemption requests will be submitted by the public, how many will be approved, and what types of doses will be associated with the exemptions. If few exemptions are requested and granted, the probability of multiple exposures from exempted and licensed practices exceeding a substantial fraction of 100 millirem per year is considerably reduced. Therefore, the 1 millirem per year criterion may be too restrictive and the regulatory resources associated with its

[5] This kind of information may well be a part of the waste stream petition that the nuclear utilities are reportedly preparing for submission. If so, I would hold open the option of revisiting this question if and when the petition is filed. But at this point, I have yet to see a health and safety justification that would support a decision on the Commission's part that states should be preempted from the option of requiring waste streams designated BRC under this Policy Statement to be disposed of in licensed low-level radioactive waste disposal facilities.

[6] The argument has been made that permitting states the option of requiring BRC waste streams to be disposed of in licensed low-level waste disposal facilities would use up scarce disposal capacity and otherwise have an adverse impact on the compacting process. Indeed, this appears to have been one of the principal concerns advanced in the Commission's 1986 Policy Statement on BRC, wherein the Commission expressed the view that low-level waste generators would "be competing for space in the existing [LLW disposal] sites and the [BRC] concept should be applicable nationwide" in order to ensure "that the system works on a national basis and that it remains equitable." It was in part for this reason that the Commission declared in the 1986 Policy Statement that future "[r]ulemakings granting petitions [on BRC] will be made a matter of compatibility for Agreement States." (Policy Statement, 51 FR 30839, 30840 (August 29, 1986)). Whatever merit that approach might have had at the time, I disagree with it for two reasons: (1) Congress has vested states with the responsibility for developing and managing disposal capacity for low-level waste and, in view of this, decisions about how best to proceed, including decisions about whether states prefer to require BRC waste streams to be disposed of in licensed low-level waste sites rather than sanitary landfills, are best left to the individual states. (2) There is an abundance of disposal capacity under development at the present time and, for this reason, the concern about husbanding limited disposal capacity no longer appears to be relevant. Indeed, the decision to permit the Rocky Mountain compact to dispose of radium waste in it regional disposal facility seems to suggest that the objective of preserving limited disposal capacity for the disposal of low-level radioactive waste is not the driving consideration.

implementation may be better spent to control more significant risks. Consequently, the 1 millirem per year criterion was selected as an interim individual dose criterion to ensure that the sum of all exposures to an individual from exempted practices does not exceed a substantial fraction of 100 millirem per year. This criterion will remain an interim value until after the Commission gains experience with the potential for multiple exposures to exempted and licensed activities.

The initial rulemakings to implement the policy, particularly in the area of consumer product exemptions, should provide valuable insights into the validity and appropriateness of the 1 millirem criterion in terms of its need to protect the public against multiple exposures to nuclear materials. Although I agree with Commissioner Curtiss that a final criterion would be desirable from the standpoint of "administrative finality," it would be premature to establish the 1 millirem criterion as a final criterion until after the Commission gains more experience with exemptions of practices with widespread distribution.

Collective Dose Criterion

Commissioner Curtiss would have preferred to adopt a collective dose criterion of 100 person-rem/year because of his view that this value is more consistent with the prevalent technical view on this matter.

For the reasons discussed below, I believe that a collective dose criterion of 1000 person-rem/year is more consistent with the prevalent technical view on this matter and provides a sounder regulatory basis for making exemption decisions. The Commission considered two fundamental questions associated with the collective dose criterion: (1) Is there a need for a collective dose criterion and, if so, (2) what should the value of that criterion be?

The Commission initially questioned the very need for a collective dose criterion for the types of practices that would be considered as potential candidates for exemption. This questioning was based on a number of factors that indicated that the Commission may not need to consider collective dose in making exemption decisions. These factors included:

1. There is considerable uncertainty associated with the validity of risk estimates based on projections of collective doses composed of small to very small doses to large numbers of people.

2. The individual dose criteria of 1 and 10 millirem per year, coupled with the other provisions of the policy (e.g., broad definition of practice), should ensure a consistent and adequate level of protection of members of the public from all exempted and licensed practices.

3. Although collective dose has been considered in evaluating environmental impacts and in assessing the effectiveness of licensee ALARA programs, NRC's regulatory program has not traditionally placed specific constraints on collective doses associated with regulated activities.

4. Based on comments submitted to the Commission on its proposed BRC policy, including comments presented by the Health Physics Society, the prevailing technical view opposed adoption of a collective dose criterion in the BRC policy.

Despite these considerations, the Commission also recognized the benefit of a collective dose criterion in limiting the total population dose associated with exempted practices and in evaluating environmental impacts and the effectiveness of ALARA programs. Consequently, the Commission decided to establish a collective dose criterion as a part of the BRC policy, provided that it was based on valid scientific analysis and that it did not constrain decisions on exemptions without an adequate health and safety or environmental basis.

Based on these provisions, the Commission selected the value of 1000 person-rem/year as a level of collective does that ensures less than one health effect per practice. In selecting this value, the Commission relied on contemporary recommendations of expert national and international bodies. These included the 1988 conclusions of the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) that collective dose calculations only provide reasonable estimates of health risks if the collective dose is at least of the order of 10,000 person-rem. This value is an order of magnitude greater than the value of the collective dose criterion selected by the Commission. UNSCEAR also stated that the most likely outcome of collective doses on the order of a few hundred person-rem is zero deaths.

The Commission also considered the magnitudes of collective doses associated with practices, primarily consumer products, that have already been exempted by the Commission. This was done to provide a benchmark for the value of the collective dose criterion based on historical decisions that the public found acceptable. The Commission found that the magnitudes of the collective doses for these exempted practices fell in the range of the 1000 person-rem/year dose. Specific examples include 1200 person-rem/year from watches whose dials are adorned with paint containing tritium, 800 person-rem/year from smoke detectors containing radioactive materials, and 8600 person-rem/year from gas mantles for lanterns that contain thorium (NCRP Report No. 95).

In addition, the Commission considered the magnitude of collective doses associated with licensed activities, such as discharge of effluents from nuclear power plants. The Commission established ALARA design objectives for effluent treatment systems for power plants in Appendix I to 10 CFR Part 50. The Commission noted that the dose values established in the design objectives are generally consistent with a collective dose criterion with a magnitude of 1000 person-rem/year. However, the Commission also recognized that licensees have performed better than required in accordance with Appendix I by reducing estimated collective doses from reactor plant effluents to 110 person-rem per year in 1986, which is the most recent year for which the data have been completely assessed (see NUREG/CR-2850, Vol. 8).

Finally, the Commission and its staff are only beginning to evaluate specific details of how the BRC policy will be implemented through subsequent rulemakings and licensing decisions. Even at this preliminary stage, the Commission has identified substantive implementation issues pertaining to the application of the collective dose criterion. For example, an issue has been identified regarding how the collective dose criterion would be applied in making decisions about appropriate levels of cleanup for contaminated sites. Specifically, does the collective dose criterion apply generically to the practice of decommissioning or would it be applied on a site-specific basis? Similarly, how should the collective dose criterion by applied in cases where nuclear operations have contaminated groundwater resources that could potentially supply municipal drinking water systems? Resolution of these and other issues could cause the Commission to revise its selection of the magnitude of the collective dose criterion through future rulemakings and development of generic guidance. However, based on the technical information and recommendations currently before the Commission, 1000 person-rem/year appears to be an appropriate magnitude for the collective dose criterion.

For all of these reasons, the Commission established a collective dose criterion of 1000 person-rem/year for each practice.

ALARA

Commissioner Curtiss would prefer to define the individual and collective dose criteria as "floors" to ALARA, i.e., that the regulated community and NRC are relieved from the regulatory obligation to perform further ALARA analyses below these levels if individual doses are 1 millirem/10 millirem and the collective dose is 100 person-rem. Specifically, Commissioner Curtiss believes that the BRC policy sends a confusing message by encouraging voluntary efforts to achieve doses below the BRC criteria.

In responding to Commissioner Curtiss veiw on this issue, it is important to begin from the defintion of the term ALARA. ALARA is the regulatory concept that radiation exposures and effluents should be reduced as low as reasonably achievable taking into account the state of technology, and the economics of improvements in relation to the benefits to public health and safety and other societal and socioeconomic considerations, and in relation to the utilization of atomic energy in the public interest (10 CFR 20.1 (c)). The ALARA concept is one of the fundamental tenets of radiation protection and has been a keystone in NRC's regulatory framework. Public comments on the proposed BRC policy statement and on proposed revisions to 10 CFR Part 20 urged the Commission to define "floors" to ALARA or thresholds below which NRC would not require further reductions in doses or effluents.

The Commission responded to these comments in the policy by stating that "* * * a licensee using the exemption would no longer be required to apply the ALARA principle to reduce doses further for the exempted practice provided that it meets the conditions specified in the regulation" established for a particular exemption. In other words, the BRC criteria and implementing regulations will provide "floors" to ALARA for the exempted practice. In this regard, I agree with Commissioner Curtiss because the truncation of further efforts to reduce doses is one of the principal regulatory motivations for establishing the BRC policy.

However, I disagree with the rest of Commissioner Curtiss' view on this issue. It would be inappropriate to tell the regulated community that they cannot reduce doses below the BRC criteria. In short, although we will not require licensees to reduce doses further, we do not want to discourage their efforts to do so either. This would be tantamount to telling a licensee how to operate his or her business regardless of whether any health and safety issues are involved. Such a direction would be inappropriate because it clearly falls outside of the health and safety focus of the NRC.

In formulating the BRC policy, the Commission recognized that new technologies being developed today promise to reduce doses, and therefore risks, at lower costs than present technologies. Indeed, technological and cost considerations are explicitly recognized in the definition and application of the term "ALARA." Thus, I believe it would be inappropriate to tell licensees that they cannot implement new technologies and health physics practices to further reduce doses if they want to.

Justification of Practice

Commissioner Curtiss would prefer to endorse the principle of justification of practice (i.e., whether the potential impacts of a practice are justified in terms of net societal benefits) and retain the prerogative to reject applications for exemptions regardless of the risk they pose.

I disagree with Commissioner Curtiss' view on this matter because it puts the Commission in a position of making decisions in areas outside the normal arena of its expertise, where the agency would be especially vulnerable, perhaps justifiably so, to criticism. Consistent with the mission of the NRC, the Commission should base its judgments on an explicit, objective, and rational consideration of the health, safety, and environmental risks associated with practices, rather than on what many would perceive as personal preferences of the Commissioners. Such an approach fosters long-term stability in regulatory decisionmaking on potential exemptions.

Decisions on justification of practice involve social and cultural considerations that fall outside of the Commission's primary focus and expertise for ensuring adequate protection of the public health and safety from the use of nuclear materials. Such decisions should be made by affected elements of society, such as residents near a contaminated site, potential customers, suppliers, and other members of the general public, rather than NRC. I believe that this position is consistent with regulatory practices of other government agencies that generally do not regulate on the basis of whether a particular practice is justified in terms of net societal benefit. For example, to the best of my knowledge, the Environmental Protection Agency does not question whether the generation of hazardous wastes is justified in terms of net societal benefit, even though the agency promotes the minimization and elimination of such wastes to reduce risks.

I believe that Commissioner Curtiss misinterprets the BRC policy when he claims that it embodies a bifurcated approach on the principle of justification of practice. As clearly indicated in the policy, the Commission may determine that certain practices should not be considered candidates for exemption on the basis of risk estimates or associated uncertainties. Rejection of such an application should be based on the risks posed by the practice, rather than whether the practice is justified in terms of net societal benefit. The types of concerns he rasises about risks to children and the general public would be critically evaluated by the Commission in rulemakings to determine whether particular practices should be exempted. Therefore, I believe that the Commission has established an appropriate BRC policy that does not consider whether a proposed practice is justified in terms of societal benefit.

Agreement State Compatibility

Commissioner Curtiss also disagrees with the Commission majority view on the need for uniformity between basic radiation protection standards established by NRC and Agreement States. He indicates that he would not treat the Commission's policy on below regulatory concern as a matter of compatibility for Agreement States with respect to disposal of commercial low-level radioactive waste. He reaches this conclusion in part because he reads the Low-Level Radioactive Waste Policy Amendments Act of 1985 as giving states a great deal of latitude in deciding how to proceed with the development, construction and operation of new low-level waste disposal facilities. Drawing upon this interpretation, he concludes that individual states should be allowed the option of deciding whether low-level waste designated BRC should be disposed of in a licensed low-level radioactive waste disposal facility.

This policy statement in and of itself does not make any compatibility determinations; as indicated in the statement, compatibility issues will be addressed in the context of individual rulemakings as they occur. But I believe it is important to respond to Commissioner Curtiss on this issue in two respects. First, I do not read the Low-Level Radioactive Waste Policy

Amendments Act as giving the States particular latitude let alone specific authority in the area of waste to establish radiation standards different than those of the Commission. Second, I do not believe that the issue of BRC for waste disposal can easily be divorced from BRC in other areas such as decommissioning.

The Low-Level Radioactive Waste Policy Amendments Act did not change the regulatory framework applicable to Atomic Energy Act materials. On the contrary, the Act specifically recognized the importance of that framework by including provisions such as the following:

Sec. 4(b) * * * (3) EFFECT OF COMPACTS ON FEDERAL LAW.—Noting contained in this Act or any compact may be construed to confer any new authority on any compact commission or State—

(A) to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner incompatible with the regulations of the Nuclear Regulatory Commission * * *;

(B) to regulate health, safety, or environmental hazards from source material, byproduct material, or special nuclear material;

* * * * *

(4) FEDERAL AUTHORITY.—Except as expressly provided in this Act nothing contained in this Act or any compact may be construed to limit the applicability of any Federal law or to diminish or otherwise impair the jurisdiction of any Federal agency, * * *

Unlike the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Low-Level Radioactive Waste Policy Act, as amended, does not authorize States to establish more stringent standards. The Act also specifically directed the Commission to establish standards for exempting specific radioactive waste streams from regulation due to the presence of radionuclides in such waste streams in sufficiently low concentrations or quantities as to below regulatory concern. If, in response to a request to exempt a specific waste stream, the Commission determines that regulation of a radioactive waste stream is not necessary to protect the public health and safety, the Commission is directed to take necesary steps to exempt the disposal of such radioactive material from regulation by the Commission. Thus, the Act did not, in my view, grant any particular latitude to the States to determine which waste streams were of regulatory concern. Rather, it reaffirmed the existing roles of the NRC and the States in determining regulatory standards for low-level waste and specifically defined the Commission's authority in this regard as including designating waste streams which are below regulatory concern.

The respective roles of the Commission and the States with respect to the licensing and regulation of Atomic Energy Act materials, including the disposal of low-level radioactive waste received from other persons, are governed by the provisions of section 274 of the Atomic Energy Act of 1954, as amended. Absent the execution of a section 274b Agreement with the NRC, a State is preempted by Federal law from exercising regulatory authority over the radiological hazards of these materials. The Commission is authorized to enter into an agreement with a State only upon a finding that the State program is compatible with the Commission's program for regulation of radioactive materials and adequate to protect the public health and safety. Section 274d.(2). The legislative history of section 274 stresses throughout the importance of and the need for continuing compatibility between Federal and state regulatory programs. In comments on the legislation, the Joint Committee on Atomic Energy (JCAE) stated that

5. The Joint Committee believes it important to emphasize that the radiation standards adopted by States under the agreements of this bill should either be identical or compatible with those of the Federal Government. For this reason the committee removed the language 'to the extent feasible' in subsection g. of the original AEC bill considered at hearings from May 19 to 22, 1959. The committee recognizes the importance of the testimony before it by numerous witnesses of the dangers of conflicting, overlapping and inconsistent standards in different jurisdictions, to the hindrance of industry and jeopardy of public safety.

Sen. Rept. No. 870, September 1, 1959, 86th Cong., 1st. Sess.

The potential problems from conflicting standards identified by the JCAE in 1959 are fully apparent in the context of BRC and demonstrate why the scope of compatibility findings to be made by the NRC cannot be drawn to exclude low-level radioactive waste disposal. For instance, the Commission intends to use the risk criteria identified in the policy statement to establish decommissioning criteria, i.e., the level at which a formerly licensed site may be released for unrestricted use. If the states are permitted to require that low-level waste streams designated BRC by the Commission be disposed of in a low-level waste facility, it could result in a site in one state being released for unrestricted use, while soil or materials in an adjacent state at that level would be required to be confined in a low-level waste facility. If a patchwork of disposal criteria were to develop, it would be virtually impossible to establish decommissioning funding requirements that would be adequate to assure that all licensed facilities will set aside sufficient funds over the life of a facility to pay for decommissioning. The resulting confusion from these conflicting standards could well result in delays in adequate decommissioning of contaminated sites and certainly in unnecessary concern on the part of the public. I continue to believe that reserving to the NRC the authority to establish basic radiation protection standards, including designating which waste streams are below regulatory concern, is fully justified to ensure an adequate, uniform and consistent level of protection of the public health, safety and the environment.

[FR Doc. 90–15309 Filed 7–2–90; 8:45 am]
BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Board

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S): .

(1) Collection title: Notices of Intent to Offset Federal Income Tax Refund.

(2) Form(s) submitted: G–49A, G–49B.

(3) OMB Number: New Collection.

(4) Expiration date of current OMB clearance: Three years from date of approval.

(5) Type of request: New Collection.

(6) Frequency of response: Annually.

(7) Respondents: Individuals or households.

(8) Estimated annual number of respondents: 300.

(9) Total annual responses: 300.

(10) Average time per response: .166 hours.

(11) Total annual reporting hours: 50.

(12) Collection description: Under section 3720A ot title 31, U.S.Code, the Railroad Retirement Board (RRB) is authorized to refer to the Internal Revenue Service legally enforceable debts for collection by offset against tax refunds owed to individuals by the Government. The collection obtains information from overpaid beneficiaries under the Railroad Retirement Act or

the Railroad Unemployment Insurance Act concerning the beneficiaries' willingness to either pay in full the amount of the debt owed, or to indicate reasons for not paying some or all of the debt.

ADDITIONAL INFORMATION: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Shannah Koss-McCallum (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 90–15395 Filed 7–2–90; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28145; File No. SR–NSCC–90–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Proposed Rule Change Regarding Comparison and Settlement of Municipal Bond Transactions

June 25, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on May 17, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit DTC-eligible, book-entry only, regular-way municipal securities to settle in NSCC's Continuous Net Settlement ("CNS") System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) In March of 1984, NSCC received Commission approval to implement Phase IV of its Municipal Bond Comparison System. Phase IV created a system for municipal securities which would enable Participants to compare and settle municipal securities trades in an automated format and was intended to permit the settlement of such in either the CNS, or in the Balance Order System (on a trade-for-trade basis). NSCC did not implement the CNS settlement options at that time, however, in order to allow Participants the opportunity to become familiar with automated comparison facilities, uncomplicated by the sophisticated CNS netting system. NSCC regarded this as an interim measure. Nevertheless, NSCC has permitted Participants, during this intervening period, to be exposed to CNS processing, by allowing them to compare and settle in CNS, for a period of ten days following the when-issued trading period, trades in regular-way municipal securities that are depository eligible. NSCC, along with the Securities Industry Association and the Public Securities Association, believe that it is now appropriate to offer CNS processing for all regular-way transactions in book-entry only municipal securities. Consequently, this filing announces NSCC's intention to offer Participants the option of settling DTC-eligible, book-entry only, regular-way municipal securities transactions in CNS.

(2) Since the rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, it is consistent with section 17A of the Act, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has received one written comment from the Cashiers' Association of Wall Street, Inc., supporting NSCC's plan to include DTC-eligible, book-entry only, regular-way municipal securities in the CNS system. NSCC will notify the Commission of any additional written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period is to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to file number SR–NSCC–90–10 and should be submitted by July 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–15414 Filed 7–2–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; agreements filed during the Week ended June 22, 1990.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 46985

Date filed: June 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Expedited Resolution 002dd.
Proposed Effective Date: August 1, 1990.

Docket Number: 46986

Date filed: June 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: Composite Resolutions.
Proposed Effective Date: October 1, 1990.

Docket Number: 46988

Date filed: June 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote S052 (Use of Radio Frequency Technology for the Automatic I.D. of Unit Load Devices).
Proposed Effective Date: October 1, 1990.

Docket Number: 46989

Date filed: June 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote S051 (International Express Waybill).
Proposed Effective Date: October 1, 1990.

Docket Number: 46990

Date filed: June 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 413 (Japan-Guam/Saipan fares).
Proposed Effective Date: July 2, 1990.

Docket Number: 46991

Date filed: June 20, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mid Atlantic Expedited Resolutions.
Proposed Effective Date: July 1/August 1, 1990.

Docket Number: 46993

Date filed: June 21, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 414 (Amend Rounding Units for Philippine Peso).
Proposed Effective Date: July 1, 1990.

Docket Number: 46994

Date filed: June 22, 1990.
Parties: Members of the International Air Transport Association.
Subject: Europe-Middle East Resolutions.
Proposed Effective Date: October 1, 1990.

Docket Number: 46995

Date filed: June 22, 1990.
Parties: Members of the International Air Transport Association.
Subject: South Atlantic Expedited Resolutions.
Proposed Effective Date: August 1, 1990.

Docket Number: 46996

Date filed: June 22, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC1 (USA/US Territories) Expedited Resolutions.
Proposed Effective Date: August 1, 1990.

Docket Number: 46997

Date filed: June 22, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC3 (Except To/From U.S. Territories) Expedited Resolutions.
Proposed Effective Date: August 1, 1990.

Docket Number: 46998

Date filed: June 22, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC3 (To/From U.S. Territories) Expedited Resolutions.
Proposed Effective Date: August 1, 1990.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 90-15361 Filed 7-2-90; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159—Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment Using Global Positioning System (GPS); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the Special Committee 159—Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment Using Global Positioning System (GPS) Meeting to be held July 30-31 and August 1 in the RTCA Conference room, One McPherson Square, 1425 K Street, NW., suite 500, Washingotn, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of the fourteenth meeting held March 26-28; (3) reports of working group activities: (a) integrity implementation, (b) operations, (c) test requirements, and (d) GIC wide band/narrow band; (4) reports on GPS/GLONASS activities; (5) review of EUROCAE and other comments; (6) review of initial draft of the committee report; (7) assignment of tasks; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washingotn, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 26, 1990.
Geoffrey R. McIntyre,
Designated Officer.
[FR Doc. 90-15382 Filed 7-2-90; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Daviess County, KY and Spencer County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge over the Ohio River near the city of Owensboro, Daviess County, Kentucky, and the city of Rockport, Spencer County, Indiana.

FOR FURTHER INFORMATION CONTACT:
Mr. Paul E. Toussaint, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602-0536. Phone (502) 227-7321; FTS 352-5468, or
Mr. D.W. Lambert, Director, Division of Environmental Analysis, Kentucky Transportation Cabinet, 419 Ann

Street, Frankfort, Kentucky 40622, Phone (502) 564–7250.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement in Daviess County, Kentucky, and Spencer County, Indiana.

The proposed project is the construction of a new four-lane bridge crossing the Ohio River between US 60 in Daviess County, Kentucky, and US 231 in Spencer County, Indiana. The purpose of the bridge is to improve local travel between Owensboro, Kentucky, and Rockport and southern Indiana, and to ultimately enhance regional accessibility, facilitating the area's connection with I–64.

Four alternate crossing locations between Owensboro and Rockport are currently under consideration. The Build A alternate originates approximately 7.7 miles northeast of the existing US 231 bridge in Owensboro at US 60, crosses the Ohio River in a northwesterly direction, and terminates approximately 1.3 miles northeast of Rockport at the intersection of US 231 and IND 66. The Build B alternate originates approximately 6.7 miles northeast of the existing bridge at US 60 in Owensboro, proceeds northwesterly following the existing alignnment of Iceland Road, crosses the Ohio River, and terminates just south of Rockport, connecting with IND 45 (just south of the Lakewood Country Club). The Build C alternate begins approximately 0.3 miles east of the existing bridge at the interchange with the US 60 (Owensboro) Bypass, crosses the Ohio River in a northerly direction, and terminates on US 231 approximately 2.8 miles south of the IND 45/US 231 intersection, southwest of Rockport. The Build D alternate begins on US 60 at the same point as Alternate A, but swings eastward for line A crossing the Ohio River between Honey Creek and Grandview, Indiana, at river mile 743, skirts the eastern edge of the Rockport Generating Plant, and connects with US 231 approximately 6 miles north of Rockport.

Design features for the proposed roadway portions of the project include four 12-foot wide driving lanes (with 12-foot wide outside shoulders), separated by a 40-foot wide, depressed median. A 14-foot wide median would be used at the bridge approaches. The proposed bridge design would accommodate the four driving lanes divided by an 8- to 10-foot wide median (with 8- to 12-foot wide outside shoulders). The bridge design elements are not yet fully developed at this stage of the planning study. Typical right-of-way width requirements will vary between 200 and 300 feet depending on cut-and-fill requirements and drainage features.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies with jurisdiction or known to have an interest in this proposal. The U.S. Coast Guard, Army Corps of Engineers, and the Environmental Protection Agency have been invited to be cooperating agencies. A public hearing will be held upon approval of the DEIS. Public notice will be given of the time and place of the hearing. The DEIS will be available for public and agency review and comment prior to the hearing. It is estimated that the DEIS will be available for public review in September 1990.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Issued On: June 21, 1990.

Paul E. Toussaint,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 90–15396 Filed 7–2–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 26, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0144.
Form Number: ATF Form 2736 (5100.12).
Type of Review: Extension.
Title: Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.
Description: ATF Form 2736 (5100.12) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond identifies the shipment, the parties, the date, and the amount of the bond coverage.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0199.
Form Number: ATF Form 5110.30.
Type of Review: Extension.
Title: Drawback on Distilled Spirits Exported.
Description: ATF Form 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the U.S. The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0398.
Form Number: ATF Forms 2093 (5200.3) and 2098 (5200.16).
Type of Review: Extension.
Title: Application for Permit Under 26 U.S.C. chapter 52—Manufacturer of Tobacco Products or Proprietor of Export Warehouse; Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse.
Description: These forms and any additional supporting documentation are used by tobacco industry members to obtain and amend permits necessary to engage in business as a Manufacturer of Tobacco Products or Proprietor of Export Warehouse.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 366.
Estimated Burden Hours Per Respondent:
Form 2093 (5200.3) 2 hours
Form 2098 (5200.16) 1 hour
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 504 hours.

Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Juanita F. Holder,
Departmental Reports, Management Officer.
[FR Doc. 90–15347 Filed 7–2–90; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 26, 1990.

The Department of Treasury has submitted the following public informtion collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0051.
Form Number: CF 7523.
Type of Review: Extension.
Title: Entry and Manifest of Merchandise Free of Duty.
Description: This form is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions and by Customs to authorize the entry of such merchandise. It is also used by the carrier to show that the materials being imported are to be released to the importer or consignee.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 4,950.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8,247 hours.
Clearance Officer: Dennis Dore, (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Juanita F. Holder,
Departmental Reports, Management Officer.
[FR Doc. 90–15346 Filed 6–29–90; 8:45 am]
BILLING CODE 4820–02–M

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Solicitation of applications for membership on Treasury Advisor Committee on Commercial Operations of the U.S. Customs Service.

SUMMARY: The Department of the Treasury plans to renew the Advisory Committee for another two-year term. This notice establishes criteria and procedures for the selection of members who will serve on the Committee for the next two-year term.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), (202) 566–8435.

Pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, and the Federal Advisory Committee Act, Public Law 92–463, the Assistant Secretary (Enforcement) announces an application period for membership on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service. Applications are due by August 15, 1990.

The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding commercial operations of the U.S. Customs Service and to submit a report to Congress containing a summary of its operations and its views and recommendations. The Department of the Treasury plans to renew the Committee upon expiration of its first two-year term under the provisions of the Advisory Committee Act. The Committee provides a critical forum for distinguished representatives of diverse industry sectors to present their views on major issues involving commercial operations of the Customs Service. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There is no other single body the serves a comparable function.

SUPPLEMENTARY INFORMATION:

Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), Congress repealed the statutory mandate for a Customs User Fee Advisory Committee and directed the Secretary of the Treasury to create a new Advisory Committee on Commercial Operations of the U.S. Customs Service. The original Committee consists of 20 members drawn broadly from industry sectors affected by Customs commercial operations. The Committee was tasked to provide recommendations to the Secretary of the Treasury and an annual report to Congress. The Committee's charter was filed on October 17, 1988. The Committee held its first meeting on December 16, 1988 and has met quarterly thereafter. Under the Advisory Committee Act, the Committee will expire on its second anniversary unless renewed.

Objectives, Scope and Description of the Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is expected that, during its second two-year term, the Committee will consider such issues as proposed customs modernization, user fee, and other customs legislation, administration of staff and resources for commercial operations, commercial and trade enforcement, administration and enforcement of export control laws, impact of Customs commercial operations on ports and carriers, automated systems, the impact of innovations such as National Entry Processing, and proposed regulations and directives.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a two-year period before renewal or abolishment and will meet no more than 12 times during that period. The Committee will consist of 20 members and the Chairman. The members shall be selected by the Secretary of the Treasury from representatives of the trade or transportation community served by Customs, the general public, or others who are directly affected by Customs commercial operations. In addition, members shall represent major regions of the country, and not more than ten members may be affiliated with the same political party. Members shall not be paid compensation nor shall they be considered Federal Government employees for an purpose.

Members who were appointed to the Committee during its first two-year term are eligible to reapply for membership. Membership on the Committee is

personal to the appointee. Under the Committee By-laws, a member may not send an alternate to represent him at a Committee meeting. In addition, a member who is absent for two consecutive meetings or two meetings in a calendar year shall lose his seat on the Committee.

Meetings of the Committee generally will be held quarterly in the Treasury Department in Washington, DC. At the present time there is no appropriation or other source of funds to reimburse members for travel or per diem costs incurred to attend meetings.

Application for Advisory Committee Appointment

Any interested person wishing to serve on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service must provide the following:

—Statement of interest and reasons for application;
—Complete professional biography or resume;
—Political affiliation, in order to ensure balanced representation.

In addition, applicants must state in their applications that they agree to submit to reappointment and annual security and tax checks.

The application period for interested candidates will extend to August 15, 1990. Applications should be submitted by close of business, August 15, to the Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Dated: June 28, 1990.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 90–15436 Filed 7–2–90; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 10, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–15584 Filed 6–29–90; 2:12 p.m.]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 24, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–15585 Filed 6–29–90; 2:12 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 31, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–15586 Filed 6–29–90; 2:12 pm]
BILLING CODE 6351–01–M

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 a.m., Friday, July 6, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 28, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 15470 Filed 6–28–90; 4:40 pm]
BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 2, 9, 16, and 23, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 2

There are no Commission meetings scheduled for the Week of July 2.

Week of July 9—Tentative

There are no Commission meetings scheduled for the Week of July 9.

Week of July 16—Tentative

Monday, July 16

2:00 p.m.
Briefing by NUMARC on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)

Wednesday, July 18

2:00 p.m.
Briefing on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

Week of July 23—Tentative

Thursday, July 26

1:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

NOTE: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.
Office of the Secretary.
[FR Doc. 90–15604 Filed 6–29–90; 2:13 pm]
BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:17 p.m. on Tuesday, June 26, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) matters relating to the resolution of certain failed thrift institutions; (2) a recommendation regarding the relocation and leasing of office space for the Corporation's Western Regional Office in Denver, Colorado; (3) a recommendation regarding the leasing of office space for the Corporation's Northern Consolidated Office in Tulsa, Oklahoma; and (4) recommendations regarding the selection of contractor for the review of the 1988 FSLIC Assistance Agreements.

In calling the meeting, the Board determined, on motion of Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director C. C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the

"Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 27, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 90-15475 Filed 6-29-90; 9:59 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 128
Tuesday, July 3, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Partially Closed Meeting

Correction

In notice document 90-13601 appearing on page 23955 in the issue of Wednesday, June 13, 1990, in the first column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

Correction

In notice documents 90-14872, 90-14873 and 90-14879 appearing on pages 26247 and 26248 in the issue of Wednesday, June 27, 1990, each of the agency headings were incomplete and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP90-108-001]

Columbia Gas Transmission Corp.; Compliance Filing

Correction

In notice document 90-14848 appearing on page 26254 in the issue of Wednesday, June 27, 1990, in the second column, the docket line should appear as set forth above.

BILLING CODE 1505-01-D

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System

Correction

In notice document 90-10001 beginning on page 18163 in the issue of Tuesday, May 1, 1990, make the following corrections:

1. On page 18163, in the second column, under the heading "**FFIEC Notice**", in the fourth line from the bottom, insert "the" between "making" and "evaluation".

2. On the same page, in the third column, in the second line "duplicative" should read "duplication".

3. On page 18164, in the third column, in the 18th line "responses" should read "response".

4. On the same page, under the heading "*4. Reproduction and Mailing Costs*", in the sixth line "office" should read "offices".

5. On page 18168, in the first column, in the first full paragraph, in the fourth from last line "institutions" should read "institution".

6. On page 18169, in the first column, in the 17th line from the bottom "unreasonably" should read "unreasonable".

7. On the same page, in the third column, in the 9th line from the bottom "contract" should read "contact".

8. On page 18170, in the first column, in the third line "leading" should read "lending".

9. On the same page, under the heading "*Assessment Factor C*" in the first column, in the sixth paragraph, in the first line "than" should read "that".

10. On the same page, in the second column, under the heading "*Assessment Factor A*", in the seventh paragraph, in the second line "leading" should read "lending".

11. On the same page, in the same column, under the heading "*Assessment Factor C*", in the second paragraph, in the first line "CFA" should read "CRA".

12. On page 18171, in the third column, under the heading "**II. Marketing and Types of Credit Offered and Extended**", under paragraph "(J)", in the penultimate line delete "and".

13. On page 18172, in the second column under the headings "**Needs to Improve**" and "*Assessment Factor B*", in the fourth paragraph, in the third line "frequently" should read "infrequently".

14. On the same page, in the same column, in the fourth line from the bottom "organization" should read "origination".

15. On page 18173, in the second column, in the 11th line "include" should read "exclude".

16. On the same page, in the same column, under the heading "**Needs to Improve**", the subheading should read "*Reasonableness of Delineated Community*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-00-4214-11; MTM 014987, MTM 034538, MTM 036030, MTM 060295, MTM 1418, MTM 42169, MTM 42172]

Proposed Continuation of Withdrawals; Montana

Correction

In notice document 90-13795 appearing on page 24165 in the issue of Thursday, June 14, 1990, make the following corrections:

1. In the first column, under "Ross Creek Cedar Natural Area (100 acres)", in the fourth line "SE¼NE¼," should read "SE¼NW¼,".

2. In the second column, under "Bull River Administrative Site (82.89 acres)", in the third paragraph, "Cottonwood 6" S. 44° E. 1.32 chs." should read "Cottonwood 6" N. 44° E., 1.32 chs."

3. In the same column and under the same entry, and under "From corner No. R-1 by metes and bounds", in the fifth line the first letter "N" should read "S.".

BILLING CODE 1505-01-D

federal register

Tuesday
July 3, 1990

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Rules of Practice for FAA Civil Penalty Actions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-21]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In accordance with a decision of the United States Court of Appeals for the District of Columbia, issued on April 13, 1990, the FAA published the rules of practice for civil penalty actions for comment by interested persons. This final rule adopts and republishes, with certain changes discussed herein, the initiation procedures and the rules of practice for FAA civil penalty actions (1) not exceeding $50,000 for a violation of the Federal Aviation Act of 1958, or of any rule, regulation, or order issued thereunder, and, (2) regardless of amount, for a violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder. Adoption of the final rule is necessary so that the FAA may resume initiation, prosecution, and adjudication of civil penalty actions under its statutory authority. The final rule is intended to complete the rulemaking action issued after the court's decision.

DATES: Effective date: August 2, 1990. Effective date of the final rule issued on April 17, 1990 (55 FR 15110; April 20, 1990): August 2, 1990.

FOR FURTHER INFORMATION CONTACT: Denise Daniels Ross, Special Counsel to the Chief Counsel (AGC-3), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3773.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of this final rule. Persons interested in being placed on the mailing list for future notices of proposed rulemaking also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On August 31, 1988, by final rule, the FAA promulgated rules of practice (53 FR 34646; September 7, 1988) for civil penalty actions conducted under a statutory amendment (Pub. L. 100-223; December 30, 1987) to the Federal Aviation Act of 1958, as amended. That amendment empowers the Administrator to assess civil penalties, not to exceed $50,000, for a violation of the Federal Aviation Act or the FAA's safety regulations promulgated thereunder. Under this statutory authority, a civil penalty may be assessed only after notice and an opportunity for a hearing on the record. The legislation enacted in 1987, authorizing the FAA generally to assess civil penalties administratively, was limited by its terms to a 2-year period, effective through December 30, 1989. On December 15, 1989, a 4-month extension of the FAA's authority was enacted, effective through April 30, 1990. On May 4, 1990, an additional 3-month extension of the FAA's authority was enacted; the legislation states that the extension is effective as of April 30, 1990. The authority now will expire on July 31, 1990, unless Congress again acts to extend it or make it permanent.

In the final rule issued in August 1988, the FAA made the rules of practice applicable to civil penalty actions, regardless of amount, for a violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder. In the August 1988 final rule, the FAA invited interested persons to comment on the rules of practice. On March 17, 1989, the FAA issued a detailed disposition of the 20 comments submitted on the rules of practice, responding to the commenters' objections to specific provisions of the rules of practice. 54 FR 11914; March 22, 1989.

The Air Transport Association of America filed a petition for review in the U.S. Court of Appeals for the District of Columbia (No. 89-1195), challenging the agency's promulgation of the final rule and the rules of practice for civil penalty actions. Several persons in their individual capacity, the Aircraft Owners and Pilots Association, the National Air Carrier Association, the Air Line Pilots Association, and America West intervened in support of the petition for review filed by the Air Transport Association.

On April 13, 1990, the court of appeals issued its decision in *Air Transport Association* v. *Department of Transportation* (D.C. Cir., No. 89-1195). In a 2-1 decision, the court agreed with the petitioner and intervenors that the FAA was obliged by section 553 of the Administrative Procedure Act to provide notice and comment before the rules of practice in civil penalty actions were promulgated. The court held that the procedural challenge to promulgation of the rules of practice in August 1988 was ripe for review and granted the petition for review on that ground. The court expressed no opinion on the ripeness or the merits of the Air Transport Association's several substantive challenges to the rules of practice. On May 29, 1990, the Department of Justice filed with the U.S. Court of Appeals a petition for rehearing and a suggestion for rehearing *en banc* of the panel's decision issued on April 13, 1990. On June 20, 1990, by a vote of 5-5, the U.S. Court of Appeals denied the suggestion for rehearing *en banc*. The Department of Justice is currently considering whether to seek further review of the April 13 panel decision in the United States Supreme Court.

In its April 3 decision, the court ordered the FAA "not to initiate further prosecutions * * * until the agency has engaged in further rulemaking in accord with section 553." Slip op. at 21. In the exercise of its "equitable remedial powers," the court stated, "[T]he FAA is free to hold pending cases in abeyance while it engages in further rulemaking. If and when the FAA promulgates a final rule for adjudication of administrative penalty actions, it may then resume prosecution of these cases." *Id.* at 20-21.

In accordance with the court's decision, all civil penalty cases initiated under the rules of practice have been held in abeyance and no notices of proposed civil penalty have been issued since the court's decision. Even informal procedures, such as informal conferences, have been held in abeyance. The administrative law judges in the Office of Hearings of the Department of Transportation have notified the parties in docketed cases that all proceedings are being held in abeyance pending adoption of procedural rules in accordance with the court's decision. No new hearings have been scheduled since April 13, 1990. The FAA and the Office of Hearings made every effort to notify in writing all persons whose cases were pending at the time of the court's decision, whether or not a hearing had been held, scheduled, or not yet scheduled.

In its opinion, the court stated that "Insofar as the FAA's pending notice of proposed rulemaking (issued on February 28, 1990 (55 FR 7980; March 6, 1990)) seeks public comment on the individual rules that the agency intends to amend, the agency may rely on the outcome of that rulemaking as a partial fulfillment of this mandate." Slip op. at 20. Nevertheless, in light of the court's

decision, the FAA suspended the effective date of the changes contained in a final rule issued on April 17, 1990 (55 FR 15110; April 20, 1990), pending further notification in the Federal Register. By this document, the FAA gives notice that the changes published in the April 1990 final rule, to the extent they have not been revised herein, will become effective 30 days after publication of this final rule.

Concurrently with the issuance of the April 1990 final rule, the FAA issued another NPRM, published in a separate part of the same Federal Register, in response to the court's ruling. 55 FR 15134; April 20, 1990. The rules of practice, published in their entirety for comment, included the changes adopted pursuant to the April 1990 final rule. Because all proceedings under the rules of practice were suspended as a result of the court's decision, the agency moved expeditiously to issue the NPRM following the court's decision. Given the familiarity of the aviation community with the rules of practice, and the several previous opportunities the public has had to comment on these rules, the FAA provided a 30-day comment period on the April 1990 NPRM.

On June 7, 1990, the Administrative Conference of the United States (hereinafter "Administrative Conference") met in its forty-first plenary session to consider the proposed recommendations of the Committee on Adjudication, and the report on civil money penalties for Federal aviation violations prepared by Professor Richard Fallon of Harvard Law School, a consultant to the Administrative Conference. On June 20, 1990, the Administrative Conference transmitted Recommendation 90–1 to Congress. Recommendation 90–1, which will be published in the Federal Register, recounts the history of the agency's civil penalty assessment authority and the Administrative Conference's participation in reviewing implementation of the authority and the rules of practice. The Administrative Conference adopts the Adjudication Committee's recommendation that the authority for administrative assessment of civil penalties "* * * be made a permanent feature of Federal regulation of aviation safety." The Administrative Conference also recommends that Congress remove the $50,000 statutory ceiling for civil penalty actions initiated pursuant to the assessment authority.

While continuing to recommend changes to the rules of practice to eliminate ambiguities and address misunderstandings and perceptions of unfairness in the rules, the Administrative Conference notes that the April 1990 NPRM "substantially incorporates the provisions" of the Conference's recommendations. In Recommendation 90–1, the Administrative Conference notes its "intention to study the issue of the more appropriate location for adjudicatory authority[,]" if Congress extends the assessment authority either permanently or for a substantial period. According to the Administrative Conference, there are arguments on both sides of the issue of whether the assessment authority should be retained by the agency or transferred to the National Transportation Safety Board. In the Conference's words, "The better choice between the two is not self-evident."

Effectiveness of the Final Rule

The court's decision permits the FAA to "resume prosecution of [pending] cases" upon promulgation of a final rule. Slip op. at 21. In the April 1990 NPRM, the FAA stated its intent to make the rules and any revisions immediately effective upon publication of a final rule in the Federal Register as permitted under the Administrative Procedure Act. The FAA stated that good cause would exist for immediate effectiveness of the final rule to address the interests that all parties share in fair and expeditious adjudication of civil penalty actions, considering the time that civil penalty actions would have been suspended under the court's decision. The commenters neither addressed nor objected to the agency's expressed intent.

The agency continues to believe that immediate implementation of the amended rules, thus serving the interests of respondents and the public in swift prosecution and adjudication, would constitute good cause for immediate effectiveness. However, there are other interests to consider in light of the number of issues raised by the commenters in response to the April 1990 NPRM. This final rule adopts many changes to the prehearing procedures and the rules of practice that govern civil penalty hearings. Despite the interests that may be served by immediate effectiveness of the amended rules, the agency believes that both public and private interests will be better served by allowing interested persons, particularly respondents in these actions, sufficient time to review the amended rules of practice.

Therefore, the amended rules will not become effective immediately. Instead, changes to the rules of practice contained in the April 1990 final rule, changes adopted herein, and provisions adopted without change will become effective 30 days after publication of this final rule, in accordance with section 553 of the Administrative Procedure Act. The agency believes that the 30-day period will ensure that interested persons have a sufficient opportunity to review and become familiar with the revised rules of practice.

The revised initiation procedures and amended rules of practice, of course, will apply prospectively to any case initiated after the effective date of this final rule. The revised procedures and amended rules also will apply to pending cases, no matter where in the process, as described in the April 1990 final rule. 55 FR at 15125–15126; April 20, 1990. In addition to that discussion, the following guidance is offered to ensure smooth and efficient implementation of the revised prehearing procedures and amended rules of practice to pending cases held in abeyance after the court's decision.

Under § 13.221(a), an administrative law judge must give the parties at least 60 days notice of the date, time, and location of a hearing. Thus, while the required notice of the time, place, and location of a hearing could be issued as soon as the rules become effective, the agency anticipates that hearings would not be held earlier than 60 days after the effective date (in essence, 90 days after publication of this final rule). Under § 13.221(c) as revised, the parties may agree, with the consent of the administrative law judge, to hold the hearing earlier than scheduled but sometime after the effective date of the final rule.

Also, to avoid unnecessary disputes about calculation of time and the amount of time remaining to file documents or responses, the agency believes that any time period in the rules of practice that permits or requires action by a party should begin anew as of the effective date. For example, if a party had 20 days remaining (of the 50-day period) to perfect an appeal by filing an appeal brief on the date of the court's decision (April 13, 1990), the party now will have the full 50-day period to file the appeal brief, calculated from the effective date of this final rule. The FAA will construe time periods in the rules in this manner and is confident that the administrative law judges will exercise their discretion appropriately and judiciously to ensure fairness to the parties in these proceedings. If the parties find that they would be adversely affected by unanticipated time constraints, either party may request an extension of time to file documents, either orally or in writing, under § 13.213 of the rules.

Admittedly, this somewhat unusual construction of the effectiveness of the final rule will delay prosecution and adjudication of civil penalty actions brought to address violations of safety and security regulations. Nevertheless, it is equally important to ensure that civil penalty respondents are not disadvantaged by the complex posture of this rulemaking, a possibility if the revised procedures and rules were made immediately effective. During the 30-day period before the final rule is effective, the FAA will make every effort to notify civil penalty respondents, whose cases have been held in abeyance, in writing of promulgation of the final rule and adoption of the changes to the initiation procedures and the rules of practice. As occurred when the court issued its decision on April 13, 1990, the FAA anticipates that the administrative law judges also will make every effort to notify civil penalty respondents of the status of their cases. This 30-day period also will enable other interested persons to become aware of the many changes to the initiation procedures and rules of practice adopted in this final rule. Thus, on balance, the agency believes that the public interest, and the private interests of the parties, are better served by providing this 30-day period for notice and implementation of the revised procedures and rules of practice.

To the extent that this final rule again revises sections of the rules amended in the April 1990 final rule, the initiation procedures and rules of practice in this document will govern initiation and prosecution of civil penalty cases under the general assessment authority. The revisions in the April 1990 final rule either have been incorporated in this final rule unchanged or revised again. Those sections that were revised pursuant to the February 1990 NPRM (and with which the commenters agreed, continue to agree, or make no further comment) generally have been included unchanged from the April 1990 final rule. Other sections, such as § 13.16 dealing with prehearing procedures, are significantly different from the April 1990 final rule as a result of the comments to the April 1990 NPRM. The amendments to the rules of practice adopted in the April 1990 final rule, to the extent that they are not either incorporated or adopted in this final rule, will not appear in any publication other than the **Federal Register** of April 20, 1990 (55 FR 15110–15131).

The initiation procedures and the rules of practice, as they appear in this document, ultimately will be published in the Code of Federal Regulations. This final rule will be published in the **Federal Register** and may be used by the parties in civil penalty proceedings under the general assessment authority. The FAA is republishing the revised initiation procedures of § 13.16 and the entire amended rules of practice. As a matter of course, the FAA distributes the initiation procedures and the rules of practice, as published in the **Federal Register**, with a notice of proposed civil penalty to those persons who have been charged with an alleged violation for their use in any civil penalty proceedings.

Discussion

Several commenters to the NPRM issued in February 1990, in addition to addressing the issues raised in the notice, also expressed opinions on other sections of the rules of practice that were outside the scope of that NPRM. Those comments indicated concern with other sections of the rules that heretofore may not have been raised by previous commenters. In the April 1990 NPRM, the FAA presented those concerns and solicited comment on those issues.

Twenty comments were submitted on or before May 21, 1990, the closing date for receipt of comments on the proposals in the April 1990 NPRM. The FAA considered all comments received on or before May 25, 1990, including two comments received after the close of the comment period. The FAA reviewed carefully the suggestions and recommendations of the commenters. In accordance with the recommendation of one commenter, the FAA also reviewed the comments submitted previously on the rules of practice to ensure that all comments were fairly considered.

The commenters included representatives of aviation entities regulated by the FAA, such as: Pro-Tech-Tube, Inc. (Pro-Tech); Keystone Flight Services (Keystone); the National Air Carrier Association (NACA); the Air Line Pilots Association (ALPA); the Experimental Aircraft Association (EAA); the National Business Aircraft Association (NBAA); the President of the National Transportation Safety Board Bar Association (NTSB Bar Association); the Aircraft Owners and Pilots Association (AOPA); ABX Air, Inc. (Airborne); the Air Transport Association of America (ATA); the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE) (joint comments); and American Airlines. Several individuals associated with regulated entities and attorneys, who submitted comments on behalf of clients or whose practice includes aviation-related enforcement actions, also submitted comments on the April 1990 NPRM.

Although generally pleased with and supportive of the changes to the rules contained in the April 1990 final rule, commenters raise several concerns about other sections of the rules of practice. Some commenters continue to raise issues previously discussed, addressed, or adopted in the April 1990 final rule; to the extent that the commenters raise new issues related to issues addressed previously, the FAA discusses those comments here. This document also discusses issues and concerns not raised previously in comments to the rules of practice and changes adopted in this rulemaking action pursuant to those comments.

Separation of Functions

Several commenters reiterate objections they have previously expressed in this rulemaking that the separation of functions provided in the rules of practice is inadequate to ensure a system of adjudication that both is fair and appears fair. These commenters criticize the separation of functions in the rules of practice, even as revised in the April 1990 final rule. Much of their criticism, however, stems from a general view that housing prosecution and adjudication functions within one agency constitutes an inherent violation of principles of fundamental fairness and due process.

In the preamble to the April 1990 final rule, the agency exhaustively responded to many of the same concerns expressed by the commenters to this notice. 55 FR 15112–15117; April 20, 1990. Although the agency has thoroughly considered the most recent set of comments on this issue, it will not repeat the extensive discussion contained in the April 1990 final rule preamble. The agency refers the public also to four previous discussions of the agency's separation of functions in addition to the preamble to the April 1990 final rule. 54 FR 1335; January 10, 1989 (notice of implementation within the Office of Chief Counsel); 54 FR 11914; March 22, 1989 (disposition of comments to August 1988 final rule); 54 FR 46196; November 1, 1989 (preamble to final rule implementing the Equal Access to Justice Act); 55 FR 7980; March 6, 1990 (notice of proposed rulemaking on the rules of practice).

In the April 1990 final rule, the agency revised its rules of practice in response to concerns expressed by the aviation community and to suggestions made by the Committee on Adjudication and Professor Fallon. Specifically, the agency amended § 13.203 to: (1) Include

the separation within the Office of Chief Counsel described in the January 1989 Federal Register notice; (2) expressly prohibit agency employees who participate in an investigation from advising any person who performs adjudicative functions in a case or a factually-similar case; and (3) preclude the Chief Counsel from advising the decisionmaker in any case in which the Chief Counsel participated before the notice of proposed civil penalty was issued (removing the so-called temporal clause). (One private attorney, who submitted the same comment separately on behalf of two airmen, mistakenly fails to note this change to the rules of practice. Another private attorney commenter ignores this revision, claiming that "nothing [has been] done" about the lack of separation within the Office of Chief Counsel.)

A few commenters (some private attorneys, EAA, and the President of the NTSB Bar Association) repeat in general or conclusory terms their view that any separation of functions is inadequate so long as both prosecutorial and adjudicative functions are performed by the same agency. The agency deems sufficient its previous response to this point in the preamble to the April 1990 final rule. 55 FR at 15113; April 20, 1990.

This general position continues to be articulated, even by some attorneys, in terms of "due process." As the agency has noted previously, this legal argument is not supported by any provision of the Constitution or statute, or any court decision. Most commenters to this notice recognize that as a matter of constitutional and statutory law, it has long been settled that in-house adjudication of civil penalties does not constitute an inherent violation of due process. (And of course, in-house adjudication is expressly contemplated by the Administrative Procedure Act.)

AOPA notes that the agency's separation of functions "arguably meets" the requirements of the Administrative Procedure Act, but urges the agency to go beyond what the law requires, which the agency has done in deleting the "temporal clause." One private attorney concedes that, "As a matter of legal theory and Aristotelian logic, the Agency would appear to be correct." ALPA states that the legality of the separation is "beside the point[,]" because of a "widespread perception * * * that the Chief Counsel and his staff are basically prosecutorial in their outlook and orientation." These commenters object to the agency's separation of functions because they believe that, regardless of whether the rule is consistent with law, the rule in fact or in appearance is unfair or biased in favor of the agency. They note that it is important that a system of adjudication be perceived as fair by those who are subject to it, not simply that it actually operate fairly, a proposition with which the FAA agrees. Most of the commenters who oppose the agency's separation of functions do not point to its unfairness *per se*, but complain of the appearance of unfairness, or the "perceptions of the appearance" of unfairness.

Some commenters believe the agency's conduct and "attitude" render inadequate any structural separation of functions within the FAA. Other commenters focus their attention on the Office of Chief Counsel, especially the role of the Chief Counsel and the Assistant Chief Counsel for Litigation, and suggest that the entire Office be removed from the role of advising the decisionmaker. These commenters recommend that a separate staff be created to advise the decisionmaker, entirely independent of the Office of Chief Counsel. For example, ATA concludes that "Appointment of independent legal advisors, separated in all respects from prosecutors, would appear more fair."

As an indication that the agency is "incapable of fairly and properly adjudicating enforcement actions against pilots in-house," one private attorney cites the FAA's conduct in three enforcement cases which were not adjudicated in-house, but by the NTSB. In each of the three cases, the agency failed to sustain its burden of proof on the merits and the pilot was awarded attorney fees under the Equal Access to Justice Act (EAJA). While the agency does not dispute the commenter's summary of these cases, it is the FAA's prosecution of these cases that is the subject of criticism. The commenter argues that because of the agency's "adversarial and unreasonable behavior" in the prosecution of these (and ostensibly other) certificate actions, it cannot be trusted fairly to adjudicate civil penalty cases.

This comment fails to appreciate that under the rules of practice, the adjudication function is performed initially by administrative law judges employed by the Office of the Secretary of the Department of Transportation. Only an appeal of an administrative law judge's decision is considered by the Administrator. Under the rule's separation requirements, prosecutors (as well as investigators) may not communicate with the adjudicators on a case in which they have participated, or on a factually-related case and, of course, neither adjudicator is subject to the control or supervision of any prosecutor. Just as the agency may be liable for attorney fees under EAJA in adversary adjudications in Federal court and before the NTSB, so the agency is subject to attorney fees under EAJA in civil penalty proceedings adjudicated within the Department of Transportation. Finally, final decisions of the decisionmaker under the rules of practice are subject to review in the U.S. Courts of Appeals. In sum, there are ample protections built into the agency's adjudicative and appeal processes to check overzealous prosecution and ensure a fair adjudication based on the facts and the law.

A few commenters, such as AOPA, refer to a contentious relationship that has developed between the agency—most notably, the Chief Counsel—and the aviation community as evidence of an apparent partiality or bias in the agency's favor that is inconsistent with fair adjudication. The agency readily acknowledges that the civil penalty assessment authority and the rules of practice implementing that authority have engendered a significant amount of controversy, and that this controversy finds the agency and a substantial portion of the aviation community on opposite sides in court and before the Congress. Nonetheless, the agency believes the civil penalty assessment authority has been administered fairly and in good faith from its inception, and fully expects to win the confidence of the aviation community, as well as the general public, as actual experience is gained under the rules.

The agency has responded to the concerns of the aviation community, making significant changes to the rules of practice earlier this year. Just as it pledged to do, it carefully considered the revisions to the rules of practice recommended by Professor Fallon and the Adjudication Committee of the Administrative Conference, and accepted all of them. Ultimately, the proof of the fairness of the FAA's civil penalty assessment authority will be reflected in the quality of the decisionmaking, both at the hearing and appellate stages. As of this time, the agency has no reason to question the evenhandedness of decisionmaking at any level of the process, and no commenter has voiced such concern in the actual operation of the assessment authority to date.

Nevertheless, as noted above, several commenters (ALPA, ATA, AOPA, EAA, two private attorneys, including one attorney who represents two airmen) urge that the Chief Counsel's office play

no role in advising the decisionmaker. ATA states that the separation of functions "would be better implemented" (AOPA calls it "a better solution") if the decisionmaker were advised by legal advisors independent of the Chief Counsel. These commenters repeat concerns expressed previously that the Chief Counsel's role in (1) the general supervision of agency attorneys, including prosecutors, and (2) making and executing enforcement policy tilts the adjudicatory process unfairly in favor of the prosecution. They also reiterate their objection to the role served by the Assistant Chief Counsel for Litigation and his staff.

The agency again has considered these comments, although they do not rise above the level of unsupported assertions, and elects not to make any further revision to the agency's separation of functions by removing the advisory function from the Chief Counsel's office, as suggested by these commenters. The agency's response is explained more fully in the preamble to the April 1990 final rule (55 FR at 15114–15117), but is summarized below.

1. Fair adjudication is not compromised by the fact that the Chief Counsel (or the Administrator) previously was involved in policymaking that guides the adjudicator's discretion. In fact, it is in the interest of sound, fair and consistent decisionmaking for the Administrator to be advised by the agency's senior legal official. Where the Chief Counsel has played no role in the investigation or prosecution of that case or a factually-related case, there is no risk that he has prejudged the facts, the credibility of witnesses, the weight of the evidence, or the application of law to a set of facts. A previously-formed opinion of law or policy, whether held by the decisionmaker or someone who advises the decisionmaker, does not reasonably call into question the integrity of the decisionmaking process. K. Davis, *Administrative Law Treatise* 371–377 (2d ed. 1980); *see Knapp* v. *Kinsey*, 232 F.2d 458, 466 (6th Cir.), *cert. denied*, 352 U.S. 892 (1956).

2. The Chief Counsel does not supervise agency attorneys in their prosecution of civil penalty cases initiated under the rules of practice, and his general management of the Office of the Chief Counsel nationwide is sufficiently attenuated that there is no real risk of the Chief Counsel's general supervision adversely affecting the prosecution of civil penalty cases under the rules of practice. Moreover, such supervision has absolutely no effect on the adjudicatory function performed by administrative law judges; they are fully capable of ensuring a fair hearing for respondents, and as noted previously, they are completely independent of the Chief Counsel, and in fact, independent of the FAA.

3. There is nothing improper about the Chief Counsel's supervision of other attorneys who also advise the Administrator. Because the Chief Counsel and these attorneys all perform the same function of advising the FAA decisionmaker, there is no combination of functions in this relationship at all.

4. The responsibility of the Assistant Chief Counsel for Litigation to defend the FAA against tort claims does not prejudice the legal advice that official provides the Administrator under the rules of practice. One private attorney, who previously served as Assistant Chief Counsel for Litigation, maintains that the basic responsibilities of this official, and the everyday performance of his duties, inevitably involve that official in enforcement matters. Whatever may have been the case when the commenter served in this position nearly ten years ago, it is not now and has not been in many years the case that the Assistant Chief Counsel is "heavily involved in any phases of enforcement." Neither the Assistant Chief Counsel for Litigation nor his staff performs any enforcement responsibilities. These are the responsibility of the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for the regions and centers. Moreover, the separation of functions provided in the rules of practice, and assiduously observed by agency personnel, ensures that prosecutors and those who advise the decisionmaker will not communicate with each other about any particular enforcement case or factually-related case.

The agency does not quarrel with the idea that the Assistant Chief Counsel for Litigation and his staff, in performing their responsibilities to defend the agency, must be knowledgeable of, and may rely on, precedential rulings in enforcement cases, and regulatory interpretations previously issued by the agency or the adjudicative tribunal in such cases. This is a far cry, however, from the implication that the merits of an enforcement action may be decided on the basis of, or materially affected by, the government's exposure to money damages in tort, as a result of advice provided to the Administrator by the Assistant Chief Counsel for Litigation.

As the agency explained in the preamble to the final rule implementing the Equal Access to Justice Act (EAJA) (54 FR at 46196–46198; November 1, 1989), there would be nothing improper in the dual roles performed by the Assistant Chief Counsel for Litigation and his staff. There is no conflict where an agency represents the government on two separate matters, even if those matters arise from the same incident, and even if the government has varying or conflicting interests. The law and ethical standards repose in the Federal government the responsibility to resolve internally any conflict of interests; sound public policy dictates that an Executive branch agency speak with one voice that harmonizes all varying or discordant notes sung by its constituent parts. The fact that agency officials may need to struggle with difficult questions of regulatory interpretation and enforcement policy, in the context of deciding a particular enforcement case, does not render the underlying decisionmaking process unfair.

Finally, ATA continues to rely on the separation of functions provided in DOT international route proceedings, and the role of an "attorney advisor" in those proceedings. ATA states that such an attorney is "independent in his function and is entirely separate from matters of advocacy." As the agency discussed in the preamble to the April 1990 final rule, the role of the attorney advisor in international route proceedings is essentially the same as the role performed by those who advise the FDA Administrator in civil penalty proceedings under the rules of practice: Although, like the DOT lawyers under the general supervision of the General Counsel, FAA lawyers are under the general supervision of the Chief Counsel, they are entirely independent and separate from an advocacy function. Among the agency legal officials who may advise the Administrator in a case on appeal, only the Chief Counsel also is responsible for enforcement policy. But as noted previously, the Chief Counsel's exercise of policymaking and policy implementation does not disable him from rendering impartial advice to the Administrator.

Limitations Period

In the April 1990 NPRM, the FAA solicited comment on whether the agency should adopt a time limit within which it would be required to initiate a notice of proposed civil penalty after an alleged violation of the Federal Aviation Regulations has occurred. Currently, violations of the Federal Aviation Act and the Hazardous Materials Transportation Act are subject to a 5-year statute of limitations by virtue of 28

U.S.C. 2462. In the NPRM, the FAA asked a series of questions to determine the appropriate length of any time limit and how it should be applied practically. 55 FR at 15135–15136; April 20, 1990. Fifteen commenters (Pro-Tech, Keystone, NACA, ALPA, NBAA, AOPA, Airborne, ATA, American Airlines, EAA, and five individuals) responded to FAA's inquiry regarding whether the rules of practice should be amended in this regard. In addition, the agency considered the comments previously filed on this issue.

Of the 15 comments that address this issue, only Pro-Tech recommends that the 5-year statute of limitations not be further limited. Pro-Tech believes that a 5-year period is necessary to prosecute violations of the Hazardous Materials Transportation Act. The remaining 14 commenters all recommend that the FAA adopt a shorter limitations period. The suggested limitations periods range from 90 days (Keystone and one individual) to one year (NACA). Nine commenters (ALPA, NBAA, AOPA, Airborne, ATA, American Airlines, and three individuals) suggest that the agency adopt a 6-month limitations period analogous to the NTSB's stale complaint rule (49 CFR 821.33).

Commenters were asked to address the critical date from which the period would run and the critical event which must be taken by the agency within the time limit. Eight commenters (Keystone, NACA, ALPA, NBAA, AOPA, Airborne, ATA, and one individual commenter) recommend that the limitations period begin to run on the date of the alleged violation. The same eight commenters recommend that the agency be required to issue a notice of proposed civil penalty, instead of a letter of investigation, within the 6-month period. Four commenters (ALPA, ATA, Airborne, and American Airlines) state that the agency's issuance of a letter of investigation is not adequate notice to the respondent that enforcement action is pending, and should not serve to avoid dismissal of an action based on the limitations period.

American Airlines suggests that the 6-month period begin to accrue on the date the FAA learns of the violation, but in no event should FAA be permitted to initiate enforcement action more than nine months from the date of the alleged violation. American also suggests that the agency be required to do more than issue a notice of proposed civil penalty to prevent the limitations period from tolling: Specifically, the agency should be required to issue a complaint within the required limitations period. In accordance with agency policy and the rules of practice, this would require the agency to issue a notice of proposed civil penalty, offer the respondent the opportunity either to have an informal conference or otherwise submit pertinent information to the agency for consideration, and evaluate such information before the complaint is issued. American bases its recommendation on an assertion that "It is not until after the informal conference has taken place that the decision to initiate legal enforcement action is made."

Commenters were also asked whether there would be any circumstances whereby the agency's failure to bring an action within the time specified would be excused. Eight of the commenters state that, like the NTSB's rule, dismissal of a complaint under the limitations period could be avoided where the FAA demonstrates good cause for delay in initiating a case (NACA, ALPA, NBAA, AOPA, Airborne, ATA, American Airlines, and one individual).

Commenters were asked to state the comparative benefits of a specific time period versus a provision that would codify the "undue delay and prejudice" standard enunciated by some courts construing the Administrative Procedure Act. Three commenters (NACA, ALPA, and ATA) state that the respondent should not shoulder the burden of demonstrating prejudice where there is delay in initiating a case. ATA suggests that such a burden would result in constant litigation about the extent of the delay and prejudice. ATA further maintains that respondents can "not be expected to solve problems of faded, although not extinct, memories and of incomplete, although not empty, documentary records." No commenters offer any example where initiation of a case outside of a particular period prejudiced a respondent's defense of a civil penalty action, as solicited in the notice.

Although beyond the scope of this rulemaking, American also recommends that, in those cases referred by the agency to a U.S. Attorney for prosecution, such referral be accomplished within a 6-month limitations period. American further states that the agency should require that those cases referred to a U.S. Attorney be filed and served within one year of the date of the alleged incident. Related to this recommendation, it must be understood that the rules of practice subject to this rulemaking apply only to: (1) Civil penalty actions not exceeding $50,000 for alleged violations of the safety and security relations; (2) civil penalty actions not exceeding $50,000 for alleged violations of registration and recordation regulations related to drug trafficking; and (3) civil penalty actions regardless of amount for alleged violations of the Hazardous Materials Transportation Act. Consequently, any time limit adopted by the agency in this rulemaking would necessarily apply only to those cases. Any time limit would not affect any civil penalty case outside the agency's general assessment authority, such as cases exceeding $50,000 that must be referred in order to institute a suit to obtain judicial assessment of a penalty, and cases referred to a U.S. Attorney to initiate a collection action. The adoption of a limitations period applicable to any case for which the agency does not have general assessment authority is outside the scope of this rulemaking. Moreover, the FAA has no control over the resources, priorities, or schedules of the various U.S. Attorneys. Consequently, the FAA is not authorized to impose a limitations period on the offices of the U.S. Attorneys, even were it within the scope of this rulemaking.

After careful consideration of the comments, the FAA is adopting a 2-year limitations period and is amending § 13.208 of the rules of practice to so reflect. Pursuant to this limitations period, the agency will be required to issue a notice of proposed civil penalty within two years from the date of the alleged violation in all cases in which it has assessment authority. The agency is placing this provision in § 13.208, the rule on complaints, so that it is clearly set forth in the rules of practice. The agency also is amending § 13.209, the rule describing answers to complaints, so that it is clear that a respondent may file a motion to dismiss based on the limitations period instead of an answer. To conserve adjudicatory resources, issues related to dismissal of a complaint should be raised and resolved by the administrative law judge early in the proceedings. For the same reason, the agency has provided an interlocutory appeal for cause, available to either party, on the administrative law judge's ruling on a motion to dismiss a complaint based in the limitations period. Also, as many commenters suggest, the FAA is adopting a "good cause" standard that, on a case-by-case basis, may excuse delayed notification of a proposed civil penalty action. The "good cause exception" in the agency's rule is based on the first provision in 49 CFR 821.33(a)(1), the NTSB's articulation of an exception to its stale complaint rule in certificate actions.

The FAA recognizes that this limitations period will not satisfy those who believe that the agency should, in all respects, follow the NTSB's stale complaint rule. NBAA stresses that any distinction between the FAA and the NTSB will result in one system being perceived as fairer than the other. The implication of this statement is that if the FAA adopts a limitations period of longer than six months, adjudication by the NTSB will be looked on more favorably by the aviation community and adjudication by the FAA will continue to meet resistance. Despite this prediction, the FAA is obligated to carry out its statutory mandate to promote aviation safety. The agency cannot adequately undertake this mandate if it is, in essence, precluded by regulation from enforcing the Federal Aviation Regulations to a significant degree. As explained more fully below, a 6-month period would do just that.

The FAA considers the NTSB's stale complaint rule to be an artificial restraint that is not reasonably required in the interest of fairness and effectively distorts FAA enforcement priorities. Currently, the FAA must give all proposed certificate actions expedited treatment in order to avoid their nearly automatic dismissal under the NTSB's stale complaint rule. This very often requires the agency to put aside other enforcement actions that may otherwise deserve precedence. The FAA is not inclined to adopt a similar regulation that would further adversely affect FAA enforcement policies and priorities. The public interest in safety would not be served by any regulation that would likely preclude the agency from initiating a significant portion of its enforcement cases.

Contrary to the claim of one individual commenter that the FAA has "virtually unlimited resources[,]" agency resources are limited. In the counsel's offices alone, many attorneys have current caseloads of 200–400 or more enforcement cases (initiated and uninitiated certificate actions and civil penalty actions). These attorneys are also called upon to represent the agency in many matters other than enforcement. ALPA maintains that if the FAA is able to initiate certificate actions within six months, it should be able to do so with all other enforcement actions. ALPA's conclusion, however, does not follow its premise. If the agency is able to initiate even half of its caseload within six months, it does not automatically follow that, without a dramatic increase in staff or changes in priorities, the other half of its caseload could be handled with similar dispatch.

ALPA also states that a limitations period serves both the public interest and a respondent's interests, and that delayed adjudication serves no interest, either public or private. Although the agency agrees with ALPA that delay is in no one's interest, in practice it is not always possible to accomplish the goal of expeditious case initiation. For some years now, the agency has not been able to meet the 6-month deadline in all cases in which a finite suspension might have been sought. The NTSB's stale complaint rule, as it essentially appears now, was promulgated in 1963 (28 FR 13298; December 7, 1963), a time when the numbr of enforcement cases was much smaller. Given the current state of the FAA's enforcement caseload and resources to prosecute these cases, in the agency's view the NTSB's 6-month limitations period is no longer realistic.

ATA and American Airlines have, in the agency's view, a more realistic view of the FAA's resources and the effect a 6-month limitations period would have on the agency. Both commenters recognize that the agency would not be able to initiate all enforcement actions within a 6-month limitations period. Nevertheless, the commenters feel that a time limit would force the agency to pursue only those cases "that truly warrant a civil penalty[,]" and, thus, "justify the expenditure of agency resources after careful consideration of enforcement priorities." To do as ATA and American suggest, however, would mean that otherwise meritorious civil penalty actions, whose prosecution is an important tool to achieve compliance with safety and security regulations, would go unprosecuted. The agency believes such a policy would be contrary to the public interest in the considered and deliberate development of an enforcement action.

The FAA does recognize, however, that compliance and enforcement objectives are enhanced when enforcement actions are initiated and adjudicated expeditiously. Toward this end, the agency sees the benefit of a realistic limitations period that considers both a respondent's need for expeditious adjudication and the agency's finite resources and competing priorities. The agency does not consider six months to be a realistic period, given the FAA's resources, for initiation of any type of enforcement action other than an emergency certificate action.

Moreover, the commenters have not shown any evidence to suggest that any respondent has actually been harmed by the initiation of a case more than six months after the date of an alleged violation. As noted above, eight of the commenters state that the 6-month limitations period could be extended or excused where the agency demonstrates good cause for any delay. The implication of this provisional extension is that a respondent would not generally be prejudiced by an enforcement action initiated more than six months from the date of the alleged violation.

The FAA realizes that the NTSB's stale complaint rule has greatly influenced the comments on this issue. It is possible that many of the commenters resort to the NTSB's rule because it may be the only limitations period with which they are familiar. In an effort to obtain some additional guidance, the agency surveyed 22 Executive branch agencies with civil penalty assessment authority to determine if initiation of actions by these agencies is subject to a limitations period, whether imposed by the agency or another entity, other than the general 5-year statutory period.

This survey appears to confirm that the NTSB's stale complaint rule is without parallel. Indeed, the agency did not find any other limitations period imposed by regulation, and found no self-imposed limit. Four of the 22 agencies are subject to a statute of limitations period of five or six years: Department of Health and Human Services (enforcement of Medicare and Medicaid amendments of 1980, 6-year statute at 42 U.S.C. 1320(a–7a)); Department of Justice (Program Fraud Civil Remedies Act, 6-year statute at 31 U.S.C. 3808(a)); Federal Maritime Commission (Shipping Act of 1984, 5-year statute at 46 U.S.C. App. 831(e)); and Customs Service (Anti-Smuggling Act, 5-year statute at 19 U.S.C. 1621).

Thirteen of the 22 agencies are not subject to any statute of limitations other than the general 5-year provision in 28 U.S.C. 2462: Department of Agriculture (enforcement of various acts); Department of Commerce (enforcement of various acts); Department of Energy (Atomic Energy Act); Department of Housing and Urban Development (Manufactured Home Standards Act and the Department of Housing and Urban Development Reform Act); Department of Transportation (Federal Aviation Act of 1958, as amended); National Highway Traffic Safety Administration (Motor Vehicle Information Cost and Savings Act and Hazardous Materials Transportation Act); U.S. Coast Guard (Coast Guard Act of 1949 and Hazardous Materials Transportation Act); Environmental Protection Agency (Toxic Substances Abuse Act); Mine Safety Health Administration (Mine Safety Act); Federal Trade Commission

(Fair Trade Act); International Trade Commission (Tariff Act); Nuclear Regulatory Commission (Atomic Energy Act); and Securities and Exchange Commission (enforcement of various acts including Securities Act of 1933, as amended, and Securities and Exchange Act of 1934). None of these 17 agencies are subject to a regulation that affects the general or specific statute of limitations to which they are subject. Further, none of these agencies has any formal, written policy mandating initiation of an enforcement action within a shorter period than the applicable statute of limitations.

Five other administrative agencies are subject to a statute of limitations that is shorter than the 5-year period provided in 28 U.S.C. 2462. None of these five agencies has adopted a regulation or internal policy that otherwise affects the statute of limitations to which they are subject. The Internal Revenue Service enforces the Internal Revenue Act and is subject to a 3-year statute of limitations, pursuant to the Internal Revenue Code (*see* 26 U.S.C. 6501, 6502). The Bureau of Alcohol, Tobacco and Firearms is subject to a 2-year statute of limitations, pursuant to the Federal Alcohol Act (*see* 27 U.S.C. 204(i) and 207). The Federal Communications Commission enforces the Communications Act and brings forfeiture actions that are subject to a more complex statute of limitations (*see* 47 U.S.C. 503). The Commission must issue a notice of apparent liability within one year of the violation charged, unless the person holds a broadcast station license. If the person holds such a license, the Commission must issue the notice either (1) within one year of the violation charged or (2) within the current term of the broadcast station license, whichever period is longer. In no case, however, may the Commission issue the notice of apparent liability to a broadcast station license holder for a violation that is alleged to have occurred more than three years before issuance of the notice.

The Federal Energy Regulatory Commission primarily enforces three statutes by the assessment of civil penalties (Natural Gas Act, Natural Gas Policy Act, and Federal Power Act). Only the Natural Gas Policy Act contains a statute of limitations as short as three years (*see* 15 U.S.C. 3414(b)(6)(D)). Civil penalty enforcement actions brought under the authority of the Natural Gas Act or the Federal Power Act are subject to the general statute of limitations contained in 28 U.S.C. 2462. The Commission has not imposed a 3-year limitation on all its enforcement actions simply because one of the authorizing statutes it enforces has such a requirement.

The Occupational Safety and Health Administration is subject to a 6-month statute of limitations by virtue of the Occupational Safety and Health Act (*see* 29 U.S.C. 658(c)). The legislative history of the Occupational Safety and Health Act indicates that the House version of the bill originally contained a requirement that a citation issued pursuant to the bill be issued within three months of the alleged violation. The Senate version of the bill contained no limitations provision. The resulting compromise was a 6-month period. Courts interpreting this statute indicate that the limitations period serves not only to protect the employer from prejudice, but also to obtain prompt corrective action in situations where the health and safety of an employee is at stake. *Todd Shipyards Corporation* v. *Secretary of Labor*, 566 F.2d 1327 (9th Cir. 1977). Congress considered violations of the Occupational Safety and Health Act to pose an immediate and direct threat to the health and safety of workers, thus mandating that violations be addressed within a very short time frame when compared with other statutes of limitations and the general 5-year provision. Of course, where immediate corrective action is required in the interest of aviation safety and legal enforcement action is necessary, the FAA generally pursues emergency certificate action, rather than a civil penalty action, for an alleged violation.

Based on the above survey, the FAA draws several conclusions. Where Congress deems that it is appropriate, it imposes a statute of limitations for the initiation of enforcement actions. As discussed above, sometimes the statute of limitations is quite short. Aside from the NTSB's rule governing the FAA in certificate actions, however, no agency surveyed has a shorter limitations period imposed by regulation or internal policy than that imposed by statute. For the FAA to adopt, by regulation, a limitations period that significantly shortens the time in which it may initiate a civil penalty action appears relatively unprecedented in administrative agencies.

In light of the practices of other Executive branch agencies, the FAA's decision to adopt a shorter limitations period by regulation is a significant concession to the concerns expressed by the commenters. The FAA considers the 2-year limitations period to balance reasonably three interests at issue here: (1) A respondent's interest in timely notice and adjudication; (2) the agency's interest in having sufficient time to initiate a case on pain of dismissal or forfeit; and (3) the public interest in promoting compliance with, and initiating enforcement action if necessary for violations of, aviation safety and security regulations. Therefore, based on the absence of an empirical basis to support an assumption of prejudice by more than a 6-month delay in case initiation and the general practice of other Executive branch agencies, the FAA concludes that adopting a 2-year limitations period is fair.

The FAA's 2-year limitations period generally will start to run from the date of the alleged violation and will be satisfied if the FAA issues a notice of proposed civil penalty within two years of that date. As in the NTSB's rule, the FAA's rule provides that agency delay in issuing a notice of proposed civil penalty may be excused, in the discretion of the administrative law judge in a particular case, for good cause shown by the FAA. The FAA is not, however, adopting the NTSB's additional exception that may excuse delay in initiating a notice where "* * * the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor." 49 CFR 821.33(a)(1). The agency believes that this exception in the NTSB's rule is appropriate in certificate action cases where the public interest may require remedial action regardless of the agency's diligence in discovery of a violation and initiation of an action. It does not appear necessary where a civil penalty action is the appropriate sanction.

The FAA is adopting a "good cause" standard to account for delays attributable to the agency's inability to issue a notice within the 2-year period because the agency was not, or could not reasonably be expected to be, aware of a possible violation. This exception is particularly critical where violations are discovered only as a result of an accident or an incident that occurred long after a violation that may have contributed to the accident or incident. The good cause exception in § 13.208(d) enables an administrative law judge, based on a review of information presented by the parties, to excuse the agency's delay in notifying a respondent of an alleged violation in light of its late discovery of the alleged violation. There are several examples of cases, possibly due to the complexity of an investigation or the difficulty of proceeding with the action, in which such a good cause showing could appropriately excuse the agency's delay in issuing a notice: (1)

Violations of flight or duty time restrictions; (2) violations of maintenance procedures or requirements; (3) complex or lengthy investigations of air carrier operations; and (4) concurrent or subsequent criminal investigations or prosecutions.

The NTSB's rule creates a "presumption of prejudice" where a notice was issued more than six months after an alleged violation. *See Administrator* v. *Parish*, 3 NTSB 3474 (1981). Despite this presumption, the NTSB has denied motions to dismiss "stale" complaints where the agency was not aware of the alleged violation and exercised reasonable diligence to notify the respondent after learning of the alleged violation. *See Administrator* v. *Zanlunghi*, 3 NTSB 3696 (1981); *Administrator* v. *Marshall*, NTSB Order No. EA–1939 (1983); *Administrator* v. *Apollo Airways*, NTSB Order No. EA–2373 (1986). *Administrator* v. *Richard, et al.*, NTSB Order No. EA–2575 (1987); *Administrator* v. *Finke*, NTSB Order No. EA–2819 (1988). Denials of these motions are particularly appropriate where a respondent fails to demonstrate specific or actual prejudice based solely on the passage of time and the amount of time that passed was not excessive or unjustifiable.

As noted above, four commenters specifically state that a letter of investigation should not be considered sufficient to avoid dismissal of an action based on the limitations period. Despite the NTSB's recognition that it is the content of the document, not the label attached to it, that should be considered in a motion to dismiss, the FAA has not adopted a letter of investigation as a benchmark for its limitations period. *See Administrator* v. *Adams*, 3 NTSB 3142 (1980), *aff'd*, *Adams* v. *NTSB*, Civil No. 81–2847 (3d Cir. 1982) and *Administrator* v. *Tracy*, NTSB Order No. EA–1761 (1982). Although not necessary for resolution of the case, the NTSB noted in *Adams* that the agency's letter of investigation adequately apprised respondent of the reasons why future action might be taken, highlighting that the letter showed: (1) The nature of the objectionable conduct; (2) the sections of the regulations that may have been violated; and (3) the sanctions that may be imposed for those violations. *Id.* at 3143.

Instead, the FAA is responding to the sentiment of the commenters, and § 13.208(d) requires the agency to issue a notice of proposed civil penalty to prevent the limitations period from tolling. Of the four, only American Airlines articulates a reason for the insufficiency of such letter, stating that the limitations period should not be satisfied until the actual decision to initiate legal enforcement action is made. Although American states that the decision to initiate enforcement action is made only after an informal conference, with the issuance of a complaint, the FAA has always considered legal enforcement action to be initiated with the issuance of a notice of proposed civil penalty. Consequently, it is a notice of proposed civil penalty that should, and will, satisfy the limitations requirement, as does a notice of proposed certificate action under the NTSB's stale complaint rule.

Although the FAA's limitations period is satisfied by issuance of a notice, a letter of investigation ordinarily informs the respondent that a particular incident is being reviewed by the FAA. Thus, well before legal enforcement action is initiated by the issuance of a notice, the respondent is usually aware of charges directed to the respondent and that there may be a need to preserve evidence regarding a particular incident. The agency believes the notice provided in a letter of investigation reduces the chance that the respondent is prejudiced by delay, especially where legal enforcement action is initiated within two years.

Two commenters (Keystone and one individual) request that the rules require that a letter of investigation be issued by the agency within 30 days of the date of the alleged violation. Letters of investigation are discussed in FAA Order 2150.3A, Compliance and Enforcement Program, paragraph 403 (hereinafter "Order 2150.3A"). The FAA believes that issuance of a letter of investigation is more properly dictated by policy, rather than regulation. Moreover, because this rulemaking addresses only initiation of a civil penalty action and procedures during any hearing—actions that may occur only after issuance of a letter of investigation—revision of the agency's policy is beyond the scope of this rulemaking. Thus, the FAA has not revised the initiation procedures or rules of practice as suggested by these two commenters.

In addition, it would not be practical for the agency to require that a complaint be issued within this limitations period, as American Airlines suggests. An agency attorney would always need to be mindful of date by which the complaint must be issued, to the detriment of the enforcement proceeding. The FAA would not have as much flexibility in scheduling informal conferences at times and locations convenient to the respondent, if doing so might jeopardize the case. Similarly, the FAA would not have as much flexibility in negotiating settlements or waiting to receive information from respondents, to the extent that such would cause delay and might result in dismissal. Respondents would not benefit from the rigidity which would result from a regulation that would encourage the agency to issue a complaint first and ask questions later.

As stated in the April 1990 NPRM, the agency believes that a respondent's demonstration of actual prejudice resulting from the agency's unreasonable or excessive delay in initiation of a civil penalty case could be asserted as a defense in an administrative hearing. 55 FR at 15135; April 20, 1990. The FAA acknowledges that one court has held that section 555 and section 706 of the Administrative Procedure Act do not provide authority for dismissing an agency action due to agency delay. *See United States* v. *Popovitch*, 820 F.2d 134, 138 (5th Cir.), *cert. denied*, 484 U.S. 976 (1987) (abrogating *EEOC* v. *Bell Helicopter*, 426 F. Supp. 785 (N.D. Tex. 1976)). There also is case law that the equitable doctrine of laches is not a defense against the United States when it acts to enforce a public right. *See United States* v. *California*, 332 U.S. 19 (1947); *United States* v. *Arrow Transportation Co.*, 658 F.2d 392, 394–95 (5th Cir.), *cert. denied*, 456 U.S. 915 (1982).

While not unmindful of this case law, considerations of due process, and a fair construction of section 555 of the Administrative Procedure Act, lead the agency to allow for a showing of actual prejudice due to agency delay as a defense in an appropriate case. Although the agency believes it would rarely occur, it is possible that a respondent would be unable adequately to defend a civil penalty action because documents or witnesses become unavailable due solely to the agency's unreasonable or excessive delay in initiating a case. In such a case, it is possible that a respondent could make such showing of actual prejudice and petition the administrative law judge to dismiss the action, or a portion thereof, on the basis of such prejudice.

Finally, the limitations period provided in § 13.208(d) applies only to those violations alleged to have occurred on or after the effective date of this final rule. The adoption of this time limit should not serve as a defense to (1) respondents who have already received a notice of proposed civil penalty for violations alleged to have occurred more than two years before issuance of the notice; or (2) those respondents who

may receive a notice in the future, unless the violation is alleged to have occurred on or after the effective date of this rule and more than two years passed before issuance of a notice of proposed civil penalty.

Service of Documents

In comments to the February 1990 NPRM, ATA suggested a revision of the rules to provide guidance on the appropriate person to accept service of documents on behalf of a respondent in a civil penalty action. FAA specifically noted ATA's suggestion and requested comment by interested persons in the April 1990 NPRM. ATA suggested that a notice of proposed civil penalty be directed to the person who may have responded to a letter of investigation or the president (or other designated officer) of a company at its principal business address. In its earlier comments, ATA referred the FAA to the DOT's rule in economic proceedings (14 CFR 302.8(c)). NBAA, AOCI, and AAAE, and American Airlines submitted comments on ATA's suggestion in their responses to the April 1990 NPRM.

Although expressly incorporating its earlier comments, ATA suggests in its recent comments that when a corporation is identified as a respondent, documents should be sent either to the corporate official authorized to receive service of process in civil litigation or the corporation's chief legal officer. After counsel enters an appearance in a civil penalty proceeding, all subsequent documents should be served on that named counsel.

Although it takes no position on whether a specific service provision is "legally necessary," NBAA voices the perception of its members that unspecified changes regarding service of documents could enhance the sense of procedural fairness of the rules of practice. NBAA did not specifically endorse or reject ATA's suggestion. AOCI and AAAE believe that ATA's suggestion for a specific service provision is well founded and support ATA's proposed modification to the rules of practice. American Airlines states that service of documents should "protect the opportunity of the corporate respondent to respond in a timely fashion." While conceptually supporting ATA's suggestion, American states that the appropriate person for receipt of service is the person responding to a letter of investigation, the corporate security director, or the corporate legal officer. After a civil penalty case has been initiated, American suggests that all documents be served on the attorney of record, or a designated company representative if there is no attorney of record.

The commenters express a legitimate concern for large entities. In light of the agency's size and structure, the FAA understands the concerns of the commenters about proper service of documents. Because the suggestions of the commenters vary so widely regarding the appropriate person to accept service, the FAA is not adopting precisely the suggestions advanced by the commenters. Nevertheless, because of the broad support for a more specific yet still flexible provision on service of documents, particularly notices in the prehearing stages, the FAA is amending several sections of the rules to address the concerns of these commenters representing large organizations.

Although ATA referred the agency to DOT's service of process provision noted above, that section may be somewhat broader than necessary and may not adequately accommodate the numerous and varied small aviation entities and individuals that may be involved in a civil penalty action under these procedures. The FAA also is concerned that a specific provision that accommodates the needs of large corporate air carriers, in practice, could adversely affect small entities and individual respondents. With regard to American's suggestion for example, not all corporate entities, particularly small air carriers, have a security officer or legal officer on staff. The FAA does not believe that it would be wise to so limit its rules if there is a possibility that such a limitation would be detrimental to individual respondents and small entities. Also, in any cases, the person who responded substantively to a letter of investigation may not always be the appropriate person to respond to a notice that initiates a civil penalty action. Thus, the FAA is not adopting the commenters' suggestion in this regard.

The FAA, however, is adding several provisions to address service of documents to help ensure timely and properly-directed notices and responses in these actions. As revised, § 13.16(d) provides that a notice of proposed civil penalty will be sent either to an individual respondent or, in the case of a corporation or company, to the president of the company. Thereafter, a corporation or company may in writing designate another person to accept service of subsequent documents in a particular civil penalty action. A second notice that may be issued in these cases (*see* revised § 13.16(e) and the following discussion on prehearing procedures) will be sent to an individual respondent, the president of a corporation or company if there was no response to the first notice or no previous written designation, or the person designated previously by the corporation or company. The agency will send notices in civil penalty actions, marked to the attention of the president, to the address listed with the agency, an address that generally is the principal business address of the corporation or company and that should be current and correct.

The FAA also is adding language to § 23.208, the section on complaint, that repeats the provisions of § 13.16(e) as revised herein. Thus, a copy of the complaint will be served on an individual respondent, the president of a corporation or company that has not designated some other person in previous documents regarding that action, or the person designated during the prehearing proceedings to receive further documents in a particular civil penalty action. If a complaint is not already in the hands of the appropriate person as a result of documents exchanged during prehearing stages of the action, a respondent's attorney or other representative may enter an appearance in the action under § 13.204(b) of the rules.

The agency also reviewed 14 CFR 302.4(c) of DOT's rules, which requires respondents and the Department to specify in the first document filed in an action the name and address of the person who may be served with subsequent documents; in its rule, DOT requests but does not require the telephone number of that designated person. The FAA has not adopted a similar provision, believing that § 13.204(c) accomplishes, in essence, the same goal and provides similar opportunities and protections to the parties. Because the agency has similar concerns as the commenters representing large entities, the FAA also is adding a provision in § 13.209 that requires a respondent to serve a copy of the answer on the agency attorney who filed the complaint.

The agency believes that these revisions and minor editorial revisions to § 13.210 (filing of documents) and § 13.211 (service of documents) will provide the certainty desired by the commenters but retain some flexibility for both parties where it may be needed. These revisions should ensure that documents are regularly sent to the same office or person, who can either respond or forward those documents within the organization. Consistent practices thus should develop without inadvertently causing organizational changes or dictating internal procedural

changes. In addition, simplification of the prehearing procedures (revisions explained in the following section) should also address the concerns of large entities regarding service without operating to the detriment of small entities and individual respondents.

Prehearing Procedures

In its comments to the February 1990 NPRM, American Airlines suggested revision of the FAA's prehearing procedures in all civil penalty cases regardless of amount. American Airlines objected specifically to the time limits for responses by respondents contained in § 13.16. American suggested that the following process should be used in *all* civil penalty actions (including those not subject to the rules of practice and, thus, outside the scope of this rulemaking): (1) The rules should specify a time by which a person or entity must respond to a notice of proposed civil penalty; (2) the rules should specify that a person is able to compromise, without a finding of violation, the civil penalty proposed in a notice; (3) the rules should not result in forfeiture of a right to a hearing even if a respondent fails to meet the deadline contained in the rules for responding to a notice of proposed civil penalty; (4) the rules should state that an action will be referred to a U.S. attorney or a complaint will be filed with the hearing docket clerk if an action is not compromised as a result of prehearing procedures; (5) the rules should restrict default judgments or default admissions of liability until after a complaint has been filed either with a district court or with an administrative law judge. Presumably, American equates the term "default judgment" with the issuance of an order assessing civil penalty before a hearing has been held and a decision upholding part or all of the agency's action has been issued by an administrative law judge or the Administrator on appeal.

In its comments to the April 1990 NPRM, American Airlines stresses the importance of making the prehearing procedures in all civil penalty actions not exceeding $50,000 identical to the procedures used in civil penalty actions that exceed $50,000. *See* § 13.15. In light of its suggestion that the agency's complaint be filed within the limitations period, American believes that a short limitations period will force the parties to conduct their prehearing discussions promptly and without delay. According to American, "[I]f a respondent does not respond promptly with any of the options available (pay the fine, request an informal conference, compromise the penalty, submit additional materials in writing), the FAA may initiate a complaint and secure a default judgment through the administrative law judge." American requests that the FAA delete § 13.16 (j)(2) and (j)(3) so that a respondent's failure to comply with "draconian" time limits that apply to prehearing procedures would not be the basis upon which a default judgment is obtained against a respondent. Although American states that a respondent's failure to respond at all during the limitations period could be considered grounds for obtaining a default judgment, a response outside any time limits in the rules, but within the limitations period, should not result in a default judgment.

ALPA supports American's proposed modifications to the prehearing procedures of § 13.16. Like American, ALPA states that a respondent's failure to respond to a notice of proposed civil penalty should not result in forfeiture of a right to a hearing, but rather should lead to initiation, presumably by the agency attorney, of formal hearing proceedings. ALPA states that unrepresented respondents should not be penalized for negligent failure to respond or an untimely response. ATA also agrees with American's suggestion. ATA believes that the "draconian" sanction of default should be reserved for cases in which the agency proves a "willful disregard" for the rules of practice. Although not stated in ATA's comment, it would seem that the rules of practice to which this standard would apply would be limited to the initiation procedures of § 13.16 and would exclude the rules of practice applicable once a complaint has been filed and formal hearing procedures have begun. AOCI and AAAE believe that American's suggested criteria have merit in producing a prehearing posture of compromise and, thus, support American's recommendation for modification of the prehearing procedures.

Related to the issue of prehearing procedures, several commenters desire changes, either in the policy or the initiation procedures, regarding informal conferences. For example, American Airlines suggests clarification of § 13.16(g), the procedures regarding interim replies after a respondent submits additional information in response to a notice or after an informal conference. American states that an informal conference "seldom results in a immediate decision such that an election [of one of the options in § 13.16(g)] can be made within 10 days following the conference." American suggests that § 13.16(g) be revised in a manner that would require the agency attorney to send an interim response regarding material submitted at an informal conference, after which the respondent would have 10 days to submit the amount of the civil penalty, submit additional information, or request a hearing.

ATA expresses concern about § 13.16(j)(4) which states:

> An order assessing civil penalty shall be issued if the person charged with a violation— * * * [d]oes not comply with any agreement reached between the parties during an informal conference.

ATA believes that this provision is not "fair and evenhanded" because there is no corresponding sanction for the agency's failure to comply with any agreement reached at an informal conference. ATA objects to the lack of a standard for determining whether an agreement has been breached by a party and believes that, if either side breaches an agreement reached at an informal conference, the "remedy" should be rescission of the agreement and nothing more.

In response to these comments, the FAA is substantially revising § 13.16. The revisions, although not adopting each suggestion of the commenters, bring the prehearing procedures under the general assessment authority in line with current procedures and practice in certificate and civil penalty actions outside the assessment authority. In some respects, the revisions provide broader opportunities and protection for respondents than is provided under existing practice while keeping the flexibility apparently desired by the commenters.

One of the most significant changes deals with the type and timing of notices and the opportunities available after each notice is issued. The agency will continue to issue notices of proposed civil penalty to advise persons of any charges and the amount of a civil penalty proposed for an alleged violation. After receipt of a notice, a wide range of options are available. As was true when the rules were originally promulgated, a person may challenge the agency's action by requesting a hearing directly from a notice of proposed civil penalty. A person charged with a violation also may choose not to challenge the agency's action and simply submit the amount of the civil penalty proposed in the notice or agree to submit a different amount than that proposed. An appropriate order (either assessing a civil penalty for a violation or compromising the action or the amount of the penalty) then will be issued to close the action and reflect

receipt of a payment or an agreement to pay.

After a notice of proposed civil penalty has been issued, a person charged with a violation may participate in the same range of informal proceedings that were available under the rules adopted in the August 1988 final rule and available in all other enforcement actions. As the commenters suggest and so that the informal proceedings are flexible, the FAA is simplifying the proceedings and deleting the time limits that triggered required responses by persons who had participated in any informal proceeding. The FAA also is deleting the section, as one commenter suggests, that triggered an order assessing civil penalty if a person charged with a violation failed to comply with an agreement reach during an informal conference.

Several minor, editorial changes are made to the informal procedures to clarify the differences between each of the informal procedures. As revised, § 13.16(d)(2)(i) provides an opportunity for a person to present information that may lead the agency to conclude that the action should not be pursued, or a civil penalty is not appropriate, possibly due to an error previously unknown to the agency. Revised § 13.16(d)(2)(ii) provides an opportunity for the parties to discuss a person's ability to pay a proposed civil penalty and to submit documents that may result in a reduced civil penalty if appropriate.

And, finally, § 13.16(d)(2)(iii) provides an opportunity for a person charged with a violation to request an informal conference with the agency attorney handling the civil penalty action. Related to informal conferences, one commenter suggests that the agency "permit FAA attorneys to exchange information and to engage in meaningful settlement negotiations during informal conferences."

Agency attorneys already have that authority and a great deal of discretion to take appropriate action during or as a result of an informal conference. *See* Order 2150.3A, Paragraph 1207. Order 2150.3A already contemplates "full and open discussion of the case[,]" and amending the prehearing procedures will not alter or expand an agency attorney's exercise of discretion. Agency attorneys also have been advised that they are authorized to enter into civil penalty compromises without a finding of violation where they determine such a settlement to be in the public interest. 55 FR at 15124; April 20, 1990. Thus, no revision of agency policy is necessary. Even if it were, because the exercise of this authority and discretion is a matter of internal agency policy directed to agency employees, any change in policy would be more appropriately addressed by agency order than in the initiation procedures or rules of practice for civil penalty actions. Thus, the FAA declines to amend the prehearing procedures to address an agency attorney's authority in infomal conferences as suggested by the commenter.

In place of varied and numerous interim replies after informal proceedings under the previous prehearing procedures, a "final notice of proposed civil penalty" may be issued if a civil penalty action still is unresolved (by payment of a civil penalty, compromise of the action or amount of a civil penalty, or by a person's request for a hearing) after participation in informal proceedings. The notice also may be issued where a person fails to respond at all, within the 30-day period provided, by choosing one of the many options available after a notice of proposed civil penalty has been issued. At this point, the only option no longer available as a matter of right, as it is after issuance of a notice of proposed civil penalty, is the opportunity to participate in informal proceedings. If requested, an agency attorney certainly has the discretion and authority to provide that opportunity once again, but the agency attorney is not required to do so.

While an opportunity to participate in informal procedures may no longer be available as a result of a complete failure to respond, such a failure will not automatically result in the issuance of an order assessing civil penalty, as would occur under the original prehearing procedures. The agency believes that most commenters will support this revision. The opportunity to resolve the action by either submitting a civil penalty or compromising the action or the amount of the civil penalty, and the opportunity to request a hearing still are available at this point.

The FAA is not adopting a process favored by some commenters that would require the FAA to file a complaint and obtain a default judgment from an administrative law judge if a person charged with a violation does not respond at all to the agency's notices or interim responses. Under the process recommended by these commenters, it appears that a person charged with a violation could completely ignore any notices issued before a complaint was filed and, in essence, get three opportunities to request a hearing. In addition to the obvious delay such a process would engender, it would discourage participation in informal proceedings to resolve the action and encourage unnecessary litigation. Because such a process does not appear to serve the interests of the parties or the public, the FAA is not amending the prehearing proceedings to incorporate this process. However, as provided in the rules as originally promulgated, a person charged with a violation still has two opportunities to request a hearing: (1) After a notice of proposed civil penalty has been issued; and (2) after a final notice of proposed civil penalty has been issued. The FAA believes it is not unreasonable to issue an order ending the action where a person charged with a violation has received and failed to respond to two notices, one that provides substantial opportunities to resolve or challenge the action and a second that still provides the important opportunity to challenge the action by requesting a hearing.

The FAA also is amending the circumstances in which an order assessing civil penalty may be issued to a person or entity charged with a violation. As required by the enabling legislation and the Administrative Procedure Act, an order assessing civil penalty still will be issued only after notice and an opportunity for a hearing. As some commenters suggest, an order assessing civil penalty will encompass, where appropriate, an initial decision issued by an administrative law judge that has not been appealed in a timely manner to the Administrator and a final decision and order of the Administrator where a respondent has not filed a timely petition for review with a U.S. Court of Appeals. As revised, the prehearing procedures state that initial decisions and final decisions and orders, not further challenged as provided under the rules, are considered to be orders assessing a civil penalty where the adjudicator finds that a violation occurred and a civil penalty is warranted.

Under the rule as revised, an order assessing civil penalty will be issued by an agency attorney in only two circumstances. An agency attorney will issue an order if a person pays or agrees to pay a proposed civil penalty in response to either of the notices, and does not otherwise indicate a desire to compromise the action or the amount of the civil penalty or participate in the many options available under the prehearing procedures. An agency attorney also may issue an order assessing civil penalty where a person charged with a violation has failed to request a hearing in a timely manner after receiving the final notice of proposed civil penalty.

These orders issued by an agency attorney will contain a finding of

violation. The agency believes that it is appropriate to issue an order assessing civil penalty in these two limited situations where a person charged with a violation has failed to exercise the right to participate in informal procedures or failed to request a hearing challenging the agency's action. Several commenters suggest that the Administrator should not delegate to a prosecuting attorney any of the authority "to assess" a civil penalty. However, because the agency has severely circumscribed the circumstances under which that authority may be exercised and it may be appropriate to do so in those narrow situations, the FAA declines to withdraw all assessment authority from agency attorneys.

The final substantial change to the prehearing procedures involves compromise of civil penalties. *See* § 13.16(1). That section still is set forth separately to emphasize the authority to compromise. To clarify that there are two types of compromise (or settlement) available, a section is added to show that an opportunity to compromise the amount of a civil penalty is available at any time before referral for a collection action, whether the civil penalty is proposed in a notice, imposed by an agreement to compromise without a finding, or assessed by an order or decision. A separate paragraph of that section deals only with the authority and ability of an agency attorney to compromise the action without a finding of violation. That paragraph also sets forth the content of an order that would be issued pursuant to the parties' agreement to compromise the action. One commenter suggests that the agency change the title of an order issued after compromise of an action without a finding of violation, intimating that such a change is required by the statutory language and logic. As amended in the April 1990 final rule, the agency stated that the order would be called "order assessing civil penalty/settlement without finding of violation." While the clear implication of the order would seem to be apparent, the agency is changing the title of an order issued pursuant to such agreement to "compromise order." Thus, there will be a clear distinction from other orders issued by the agency that may contain findings of violations.

Complaint and answer

Several commenters compare the specificity required by the rules of practice for answers submitted by respondents with the apparent lack of required equivalent specificity for complaints issued by the agency. The commenters (such as ATA, AOPA, EAA, and ALPA) object to the specificity stated in the rules for a respondent's answer without a corresponding requirement for detail in the agency's complaint. ATA suggests, since § 13.209(d) requires respondents to address each allegation in each numbered paragraph of the complaint, that § 13.208 be amended to require agency attorneys to use separately-numbered paragraphs in a complaint, each of which contains a single allegation. ATA also recommends that § 13.208 of the rules also should require agency attorneys to state in "plain English" the following information in each complaint: (1) The facts supporting the jurisdiction of the agency; (2) any provision of law supporting jurisdiction; (3) facts upon which the complaint is based; (4) any provision of law allegedly violated by the respondent; (5) facts supporting any claimed penalty; and (6) any provision of law supporting such a claim.

ALPA recommends similar requirements in the rules for the agency's complaint. ALPA suggests revisions of § 13.208 to require: (1) A specific description of the events giving rise to the alleged violation; (2) the date, time, and place of each such event; and (3) the statutory or regulatory provisions alleged to have been violated. ALPA believes that this is the minimum information needed to give a respondent "meaningful notice" of the charges so that a defense can be prepared. EAA also believes that the rule regarding the agency's complaint should be more specific, suggesting that the agency revise § 13.208 to require citation of the regulations that allegedly were violated and a precise statement of the alleged facts. As discussed above, ATA suggests that the agency specify additional requirements regarding the complaint in § 13.208 to eliminate asymmetry in the rules of practice. In ATA's words, "Specificity will yield efficiency—a proposition at least as true for Complaints as for Answers." Conversely, while ALPA would impose additional requirements on the agency regarding its complaint, ALPA believes that the requirements regarding the contents of an answer are "too demanding" and "there is simply no need for that level of precision in the answer." Thus, ALPA would require of the agency more than "notice pleading," while relaxing significantly what it perceives to be "technical pleading" burdens on respondents. ALPA also sees "no need" for the provision in § 13.209(c) that requires a "brief statement of the relief requested by the person in the answer." ALPA argues that the agency should presume that, by filing the answer, the person charged with an alleged violation denies the allegations and seeks dismissal of the complaint. ALPA suggests that the FAA review the NTSB's rule regarding an answer (49 CFR 821.31(c)), which does not prohibit general denials or require a statement of the relief sought.

EAA objects to the provisions of § 13.209(d) (essentially unchanged from the rule promulgated in August 1988 except for substitution of the word "complaint" for the phrase "order of civil penalty") that a "general denial is not only unacceptable, but deemed to be an admission." FAA believes that this provision is a trap for the unwary and shifts the burden of proof from the FAA to the respondent. AOPA, ALPA, and one private attorney also believe that the rules should permit the use of a general denial, thus bringing the FAA's rules in line with the rule and practice of the NTSB.

EAA comments that a "respondent should be free to deny any aspect of the complaint." EAA did not cite any rule, rule provision, or agency practice that prevents a respondent from doing just that. Indeed, by requiring a respondent to address each allegation in each numbered paragraph of the complaint, the respondent could deny each allegation, deny each numbered paragraph, or deny only those allegations or paragraphs that the respondent wishes to contest or require that the agency attorney prove at hearing.

The FAA agrees with ATA's comment that specificity in initial pleadings is desirable for both parties. Specific allegations in a complaint and specific responses in an answer eliminate uncontested issues, narrow and focus any contested issues between the parties, and place contested issues squarely before the administrative law judge. Indeed, as a matter of practice and policy, the FAA's notices and complaints in both certificate actions and civil penalty actions comply with the suggestions and recommendations of the commenters. *See* paragraphs 1202(a)(1), 1204(b)(1), and 1205(b)(1) of Order 2150.3A. Although the commenters request additional specificity in the agency's complaint, none cites any specific instance in which the FAA did not provide enough information in its complaint to enable the respondent to prepare and defend against the FAA's civil penalty action. Nevertheless, the FAA is incorporating in § 13.208 the standards and requirements contained in Order

2150.3A. Thus, both the agency and respondents are subject to similar requirements for specificity in their initial pleadings filed in an action.

Some commenters suggest inclusion of detailed and specific statements supporting the agency's jurisdiction and citations to statutory and regulatory authority in the complaint, seeming to go beyond what ordinarily is required in a system of "notice pleading." The agency is not including such intricate requirements in § 13.208 because other mechanisms are available if the agency's complaint is so unclear that a respondent would be unable to prepare an adequate response. For example, under § 13.218(f), a respondent may file several motions in response to a complaint: (1) A motion to dismiss for insufficiency; (2) a general motion to dismiss; (3) a motion for more definite statement; or (4) a motion to strike. Section 13.209 allows a respondent to file these motions instead of an answer. Thus, before a respondent need deal with preparing a substantive answer to the charges, several procedural motions are available to clarify or even dismiss the complaint. In light of the availability and timing of these motions, the agency believes that there are sufficient mechanisms to address ambiguous or incomplete complaints that would adversely affect a respondent's ability to respond. Also, other revisions to § 13.209 discussed below lead the agency to believe that there is nothing inherently unfair in requiring an effort to prepare a specific response that is similar to the burden on the agency to set forth adequately the allegations in a complaint.

Because specificity in pleadings is desirable, the agency has not eliminated all requirements for specificity in an answer. However, the FAA is revising several parts of the rule so that, in some instances, what once was mandatory now is permissive, much like the NTSB's rule regarding a respondent's answer to a complaint. *See* 49 CFR 821.31(c). As revised, the rule permits a respondent to include any relief requested in an answer, but a respondent is not required to do so. The FAA is removing the phrase "each allegation" in the first sentence of § 13.209(e). Thus, a respondent is required to address each numbered-paragraph in the complaint instead of responding to each allegation that may be stated in a separately-numbered paragraph. If a respondent disagrees with all allegations in a paragraph, the respondent may simply deny the entire paragraph.

A general denial of a complaint still is considered a failure to file an answer; however, allegations in a separately-numbered paragraph that are not specifically denied no longer are automatically deemed to be admitted as true. Instead, the agency's revision of § 13.209(e) allows the administrative law judge to determine whether a respondent's failure to deny an allegation specifically should be considered an admission of the truth of that allegation. The FAA is not, however, amending § 13.209(f); failure to file an answer at all without good cause will continue to result in admission of the truth of each allegation.

Location of Hearings

Under the rules as set forth in the April 1990 NPRM, a person requesting a hearing was required to suggest a location for the hearing in the request submitted to the agency attorney pursuant to § 13.16(i). Under § 13.208 of the rules, the agency attorney was required to suggest a location for any hearing in the complaint filed with the hearing docket. If the respondent and the agency attorney did not agree on a location, the docket clerk would set a location for the hearing near the place where the incident occurred, in accordance with § 13.208(c). Either party could submit a motion to the administrative law judge under § 13.221(c) to change the location of the hearing; the administrative law judge also could change the location, on the law judge's own initiative, giving due regard for where the majority of the witnesses reside or work, the convenience of the parties, and service to the location by a scheduled air carrier. Three commenters object to one or more issues.

ATA objects to empowering the docket clerk to make an initial selection of a location for the hearing if the parties did not agree. In ATA's view, the clerk's decision would not necessarily obviate the involvement of the administrative law judge in a dispute over the hearing location. ATA suggests that the FAA delete § 13.208(c) as an unnecessary step in the process of determining a location for the hearing.

ALPA believes that the "place where the incident occurred" should not be the "controlling consideration" for determining the location because it may be "highly inconvenient for one or even both parties." ALPA suggests that the FAA revise § 13.208(c) so that it resembles 49 CFR 821.37(a) of the NTSB's rules. In pertinent part, that section states:

> The chief law judge or the law judge to whom the case is assigned shall set the date, time, and place for the hearing at a reasonable date, time, and place. * * * Due regard shall be given to the convenience of the parties with respect to the place of the hearing. The location of the majority of the witnesses and the suitability of a site served by a scheduled air carrier are factors to be considered in setting the place for the hearing. * * *

ALPA suggests adding to the FAA's rule only the sentence that begins "Due regard * * *." ALPA did not recommend that the FAA add the remainder of the NTSB's rule.

AOPA recommends that the FAA amend § 13.208(c) and § 13.221(c) to allow an administrative law judge to determine the location for hearing based on the convenience of the parties, particularly the convenience of the respondent. AOPA states that preferences expressed in the rules, such as a place near the location of the incident and convenient for witnesses, tend to "disadvantage respondents because they cannot match the resources of the FAA" to get to a location often far away from the respondent's base. AOPA acknowledges that there may be considerations that weigh in favor of the FAA in setting an appropriate place for a hearing, although that location may not be convenient for a respondent. In AOPA's view, the law judge is the proper person to weigh the relevant factors and determine an appropriate location for any hearing.

After reviewing the comments and those sections of the rules cited above, the FAA is revising the rules that address the location of the hearing. The FAA is deleting § 13.208(c) as requested; the hearing docket clerk no longer will make any decisions about the location of a hearing. The FAA is amending § 13.221(c) as suggested; the administrative law judge will set a reasonable location for any hearing.

The FAA based its original rule on the NTSB's rule. NTSB's rule requires the administrative law judge to give "due regard" to the convenience of the parties and consider factors such as those already contained in the FAA's rule as promulgated and proposed. Because these factors appear to be reasonable matters that an administrative law judge should consider in setting a hearing location, the FAA is not deleting that language from its rule. The FAA is, however, deleting the phrase "near where the incident occurred" and is not including it in any other section of the rules of practice. If the place where the incident occurred is a relevant factor that the administrative law judge should consider, either of the parties is free to raise that issue to the law judge. Because the administrative law judge now determines the location of the hearing, it is not necessary to keep that

portion of the first sentence in § 13.221(c) that preserves the administrative law judge's discretion, on the judge's own motion, to revise the docket clerk's selection of a location.

As discussed previously, the FAA is revising several of the prehearing procedures. Although it is changing the rules to require a respondent to file a request for a hearing with the hearing docket clerk instead of the agency attorney, the FAA is not changing the requirements regarding the contents of a request for a hearing. A respondent still must suggest a location for the hearing when filing that document so that the administrative law judge is aware of the respondent's desires. A copy of the request for a hearing must be sent to the agency attorney so that the attorney can file the complaint with the hearing docket clerk. The hearing docket clerk will forward a copy of the request for a hearing to the DOT Office of Hearings so that the administrative law judge will have a copy of the request, with the respondent's desired hearing location, when the case is assigned. Agency attorneys will continue to suggest a location for any hearing when filing the complaint so that the administrative law judge can determine a reasonable location for the hearing based on the suggestions of the parties. Although not required by the rules, the parties are encouraged to explain or support their suggested location so that the administrative law judge is aware of these considerations at the time of the determination. Under § 13.221(c) as revised, the parties may submit a motion to change the location of the hearing after the law judge has given notice of the date, time, and location of the hearing.

Verification of Interrogatory Responses

In the April 1990 NPRM, the FAA included the suggestion of a private attorney for revision of § 13.220(k)(1), a provision of the rules of practice dealing with interrogatories. The commenter objected to the provision in the rule that required a respondent, but not the agency attorney, to respond under oath to interrogatories. The commenter suggested that the agency amend § 13.220(k)(1) so that neither party is required to verify its interrogatory responses or both parties are required to so verify.

The commenter who initially raised this issue provides no further explanation in his comments to the agency's April 1990 NPRM. NBAA takes no position whether amendment of this rule provision is legally necessary but transmits the concerns of NBAA's members that revision of the section may enhance the perception of procedural fairness. Several other commenters support deletion of the requirement that interrogatories be signed by respondents under oath or that attorneys be required to verify their authority to sign on behalf of a party.

American Airlines states that the verification requirement should be eliminated from the agency's rule because § 13.207 of the rules already requires certification of documents by a party or the party's attorney or representative. And, because responses to interrogatories are binding on the responding party, whether signed under oath or not, the requirement to respond to interrogatories "under oath" is unnecessary. ATA also agrees that the verification requirement be eliminated from the rules of practice. ATA raises several questions regarding the requirement, in addition to asserting that the section is not clearly worded, and suggests that the solution to its questions is to delete the verification requirement. ATA states that the "fact-finding process is protected" so long as the answers to interrogatories can be offered as evidence against the party who answered them. ATA believes that verification of an attorney's authority to sign interrogatories on a party's behalf is not necessary, just as it is not necessary for responses to a request for admission or a request for production of documents.

On the other hand, ALPA has no objection to the requirement in § 13.220(k)(1) that answers to interrogatories be made under oath, provided that both parties in a civil penalty action are subject to the requirement. However, ALPA states that persons qualified to administer oaths are not always readily available; thus, ALPA suggests that the agency clarify the section to provide that a "verification under the penalty of perjury, in the manner authorized by 28 U.S.C. 1746, will be deemed the equivalent of a sworn declaration."

Although not explicitly stated in its comments, ATA correctly implies that the rules of practice do not require an attorney's verification of his or her authority to sign responses on behalf of a party to a request for admission or a request for production of documents. And, while the rule appears to require verification by attorneys for either party, and thus seems to place an equal burden on both parties, it is possible that attorneys for individual respondents would, in some cases, have difficulty obtaining or submitting the required verification. Thus, the FAA is deleting from § 13.220(k)(1) the requirement that an attorney verify his or her authority to sign interrogatory responses on behalf of a party. Deleting this requirement will not impair a party's use of interrogatory responses. And, as noted by American Airlines, the certification requirements contained in § 13.207 should sufficiently protect the integrity of the process, making the additional requirement in § 13.220(k)(1) redundant.

The FAA has not clarified this section as suggested by ALPA, believing instead that deleting the requirement to respond under oath is a more efficient solution that achieves what ALPA and the other commenters request. Moreover, Rule 26(g) of the Federal Rules of Civil Procedure does not require that responses to discovery requests be made under oath. Thus, after review of this section and in accordance with the recommendations of the commenters, the FAA is deleting the requirement that a party answer interrogatories under oath. As ATA and American Airlines suggest, the FAA has modified § 13.220(k) to make it clear that interrogatory responses may be used by a party to the extent that the responses meet the general standard for admission of evidence. Thus, interrogatory responses are binding on the party that provides them and the responses may be introduced into evidence by an opposing party, in the same manner as any other evidence may be introduced and used. This modification is similar to, but not so restrictive as, a party's use at a hearing of any part or all of a deposition under § 13.220(j)(4). It clearly is within the discretion of the administrative law judge under the general evidentiary rule to determine if an interrogatory response is relevant, material, and not repetitious and, thus, should be admitted into evidence in a civil penalty action.

Discovery

Several commenters object generally to the rule directed toward discovery practice. ALPA points out that the FAA's discovery rule (§ 13.220) is more extensive than the NTSB's discovery rule. While conceding that it has "no objection to any specific provision" of the current provisions in the discovery rule, ALPA asserts that "their very comprehensiveness makes us a bit uneasy," and expresses concern that the rule might create opportunities for abuse. ALPA suggests that the discovery rule should make clear that it should be "administered and construed in a manner consistent with the Federal Rules of Civil Procedure."

AOPA also objects to the current discovery rule, asserting that it "creates

a great potential for abuse by the FAA against respondents of modest means," stating that "the sheer volume and tenor of the FAA rule seems to encourage extensive, computer-generated discovery." AOPA suggests that the FAA adopt a rule similar to that of the NTSB (49 CFR 821.19), emphasizing voluntary exchange of information, using the Federal Rules of Civil Procedure as a general guide, and allow the administrative law judge to control the discovery process. A private attorney also expresses concern that the rule allows "unbridled use of discovery by the FAA."

In the abstract, the lack of specific provisions governing discovery could more likely lead to abuse than discovery procedures that are comprehensive. The FAA is confident that the comprehensiveness of the discovery rule will protect parties against abusive and burdensome discovery, rather than encourage it. The agency is unaware of any instances of abusive discovery by the FAA, and the commenters point to none. The FAA does recognize that any system of discovery is subject to abuse and, thus, the current rules of practice provide protection against abuse. Section 13.220(f) allows the administrative law judge to limit discovery under certain circumstances and § 13.220(h) provides for protective orders in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

Moreover, as was pointed out when the rules of practice were originally promulgated, the provisions regarding discovery contained in § 13.220 "are similar to the discovery permitted under the Federal Rules of Civil Procedure," although they are "tailored to accommodate the less formal requirements of administrative practice." 53 FR at 34650; September 7, 1988. As the commenters point out, the NTSB rule, which provides scant guidance, states that the Federal Rules of Civil Procedure may be used as a general guide for discovery before the NTSB. However, the NTSB rule also specifies that the Federal rules and the case law construing them "shall be considered by the Board and its law judges as instructive rather than controlling." This essentially is the same approach the FAA has followed. *See American Airlines* v. *FAA*, FAA Order No. 89-6 (December 21, 1989). Although the Administrator declined to follow the Federal Rules of Civil Procedure in that case, the Administrator's approach to resolve the issue—that the Federal Rules are instructive rather than controlling—is consistent with NTSB practice. In light of the fact that the FAA's rule already roughly parallels the Federal rules, the FAA does not believe that adding similar language to its discovery rule would add anything of value.

American Airlines points out that the current rule provides that responses and objections to discovery must be served within 30 days (§ 13.220(d)), but they do not specify that a failure to respond or object within 30 days constitutes a waiver of objections. American argues that the failure to timely respond to discovery should constitute a waiver of the right to object. The FAA does not agree that such a waiver is always warranted. Indeed, the Administrator has already decided, in a case involving American Airlines, that such a sanction would be too onerous where the party seeking the sanction demonstrated no prejudice by the delay. *Id.* The holding in that decision is not inconsistent with the practice in Federal courts, where courts sometimes but not always impose this sanction. In sum, the issue of what sanction should be imposed for failure timely to respond or object to discovery is one that should be decided on a case-by-case basis and entrusted in the first instance to the discretion of the administrative law judge. Accordingly, the FAA declines to alter the current discovery rule on this point.

American also asserts that the number of interrogatories permitted by the rule should be increased from one set of 30 questions to two sets of 30 questions each, arguing that it is costly to file a motion for leave to serve additional interrogatories, as is now contemplated by § 13.220(k)(2). American also states that permitting another set of 30 interrogatories would impose no additional burden on litigants. However, it seems to the agency that to double the number of interrogatories permitted would actually increase the burden of preparing for and responding to discovery. Thirty interrogatories should normally be sufficient to obtain relevant information in the typical civil penalty case. If it is not, a party can always file a motion for leave to serve additional interrogatories, upon a showing of good cause. *See* § 13.220(k)(2). The costs of filing such a motion should not be excessive. The FAA believes that the benefits of retaining the current limit on interrogatories outweigh whatever costs may be involved in filing a motion. The current maximum of 30 interrogatories which may be filed without the law judge's approval discourages unduly burdensome or excessive discovery, and is a necessary limitation.

Motions to Quash Subpoenas

Only ATA raises an issue with regard to motions to quash a subpoena. ATA takes issue with the fact that § 13.228(b) limits motions to quash to the person upon whom the subpoena is served. ATA believes that parties, and especially respondents, should be able to move to quash a subpoena that is served upon a third-party witness because the third-party witness will frequently have little reason or financial ability to resist compliance and because the real party in interest will frequently be the respondent.

Rule 45 of the Federal Rules of Civil Procedure speaks to the subpoena. Rule 45(a) applies to the subpoena *ad testificandum* (testimony), and Rule 45(b) applies to the subpoena *duces tecum* (documents). Significantly, Rule 45(b) provides for motions to quash or modify a subpoena *duces tecum*, but no such provision appears in Rule 45(a). In addition, Rule 45(d), which speaks to the subpoena for the taking of depositions and the place where they can be taken, contains language identical to that in § 13.228(b) of the rules of practice, specifying that the person served with the subpoena may move to quash or modify the subpoena. The only rule which supports the commenter's suggestion that parties, as well as the person served, should have standing to raise an objection to the subpoena is Rule 26(b). It provides that either a party or the person from whom discovery is sought may, upon good cause shown, seek relief from the court. Rule 26 applies, however, only to depositions and discovery, and it is unclear whether the commenter's suggestion is similarly limited.

Even though Rule 45 provides no support for the commenter's suggestion, and Rule 26 provides support only in the discovery situation, the more liberal approach found in Rule 26 is adopted herein. Accordingly, § 13.228(b) is amended to provide that either the person served or a party may move to quash or otherwise modify a subpoena, based on the standards contained in that section of the rules of practice.

Intervention

EAA questions the basis for the section in the rules on intervention by persons who are not parties to a civil penalty action. *See* § 13.206. That section stated that the administrative law judge must allow any person who has a statutory right to intervene to participate in the proceedings. If there was no statutory right to intervene, the administrative law judge was required

to exclude any other person's participation. EAA requests clarification of the statutes and the circumstances that would trigger intervention by a person who is not a party to the civil penalty action.

The FAA patterned its intervention section on a DOT rule. *See* 14 CFR 302.15. In light of the differences between DOT's complex route, rate, licensing, and enforcement proceedings and the FAA's civil penalty actions, the FAA chose to exclude the participation of any person who was not a party to the action. The FAA explained the basis for the section in its August 1988 final rule:

> In the FAA's experience, intervention requests are infrequent in enforcement actions, and these requests generally are denied. The FAA believes that requests to intervene would result in unnecessary delay and expense to the true parties in the civil penalty proceedings.

53 FR at 34649; September 7, 1988. The FAA continues to believe that this justification for the limited intervention provision remains valid.

In the disposition of comments submitted on the August 1988 final rule, the FAA expanded this explanation (54 FR at 11918; March 22, 1989). The FAA explained that participation by nonparties at the factfinding stage of a hearing generally does not contribute to resolution of the narrow issues before an administrative law judge in a civil penalty action, namely factual determinations regarding an alleged violation and a determination of an appropriate penalty for a violation. The FAA restated its view that motions to intervene and actual intervention by persons with interests more attenuated than those of the parties could delay the proceedings and complicate the issues in the case. Moreover, under § 13.233(f), the Administrator may allow a nonparty to submit an *amicus curiae* brief in an appeal of an initial decision. In addition to the Administrator's authority to remand a civil penalty action for the receipt of additional evidence or testimony and an initial decision on an issue, the ability to receive an *amicus* brief by a nonparty should provide sufficient opportunity for any person who has a substantial interest, not adequately represented by the parties, to participate in an agency enforcement action.

There does not appear to be any current statute specifically authorizing any person to participate in civil penalty assessment proceedings held by the FAA. Although no other commenter states any position regarding the FAA's section on intervention, EAA's comment prompted the FAA to review this section once again. Upon review, the FAA is revising its rule, adopting considerations similar to those in the NTSB's rules and expanding the circumstances under which a nonparty could attempt to intervene in a civil penalty action. The FAA is revising § 13.206 to include language similar to the NTSB's rule (*see* 49 CFR 821.9) and adding a time limit for submitting a motion for leave to intervene to an administrative law judge. As under the NTSB's rule, an administrative law judge is not required to entertain a motion for leave to intervene submitted less than 10 days before a hearing unless the party shows good cause for any delay in submitting the motion.

The FAA expects that motions for leave to intervene will be infrequent and an administrative law judge's granting of such a motion will be rare. By expanding this section of the rules, it does not appear that the parties' interests or the public interest will be adversely affected if a nonparty moves to intervene. However, it will be in the discretion of the administrative law judge, in light of the facts and circumstances of a particular case, to weigh any factors and determine whether intervention is appropriate. The administrative law judge also may determine the extent of an intervenor's participation in a civil penalty proceeding.

Hearsay Evidence and FAA Employee Testimony

In the April 1990 final rule, the FAA addressed, at great length and in great detail, the objections of previous commenters to the use of hearsay evidence in civil penalty actions and perceived limitations on FAA employee testimony based on the language of the applicable sections of the rules of practice. The FAA made several revisions to the rules of practice to address the concerns and suggestions of the commenters. In response to the April 1990 NPRM, only one commenter continues to object to the admission of hearsay evidence and three commenters continue to express concerns about the scope of an FAA employee's testimony in civil penalty actions.

With regard to the admission and use of hearsay evidence, the FAA has noted the longstanding acceptance by Federal courts and administrative agencies of the admission and use of hearsay evidence in administrative proceedings. The FAA cited several NTSB cases that expressly recognize the admissibility and use of hearsay evidence in its certificate action proceedings. Because the FAA has dealt with this issue on several prior occasions, the FAA will not repeat that discussion here. 53 FR at 34651; September 7, 1988 (promulgation of initiation procedures and rules of practice); 54 FR at 11917–11918; March 22, 1989 (disposition of comments to August 1988 final rule); 55 FR at 15118; April 20, 1990 (final rule amending the rules of practice promulgated in August 1988).

Only one commenter, a private attorney who has indicated his distinct preference for adjudication in Federal courts, disagrees with the agency's decision to permit the admission and use of hearsay evidence in civil penalty actions. The commenter states the FAA's "burden of proof is diminished since it can use 'incompetent evidence,' *i.e.*, hearsay that would not be admitted in Federal Court." This is not correct. First, an administrative law judge will determine what weight, if any, should be given to hearsay evidence admitted in the proceeding and whether it is reliable and material to the factual issues in the case. Second, all parties will have an opportunity to present hearsay evidence. Therefore, a respondent also will have an opportunity to prevail in a civil penalty action based on hearsay evidence. Thus, the agency does not see a sufficient reason to exclude potentially relevant and material evidence, albeit hearsay, particularly in light of the law judge's discretion regarding its weight.

This commenter objects to the possibility that the FAA could establish a *prima facie* case of a violation based on "statements made in court by an FAA Inspector who is merely repeating what he heard from someone out of court * * * who is not available to be cross-examined or confronted by the pilot or his lawyer." The commenter fails to explain how or why the person who made the statement "out of court" would be unavailable to the pilot or his attorney or that unavailability, if any, is a result of the agency's rules of practice. Under the agency's discovery rule, the respondent will be able to determine whether an inspector will rely on hearsay testimony, and prepare to address that evidence at the hearing. Although not stated, the FAA presumes that the comment may be based on a respondent's concern or financial inability to ensure that the "out of court" witness is available and appears at the hearing.

While this is a valid concern, the respondent is not without options. Even if the "out of court" witness were not able to appear at the hearing, the respondent or the respondent's attorney certainly could cross-examine the inspector to persuade the administrative

law judge that reliance on hearsay evidence is unreasonable and, thus, should be accorded little or no weight. Although the commenter states that the FAA's rule "eliminate[es] pilots' rights to engage in meaningful cross-examination," the commenter does not cite any example, either in a civil penalty proceeding or a certificate action proceeding before the NTSB, where this has occurred.

The FAA is confident that DOT administrative law judges are well aware of arguments regarding the admissibility and use of hearsay evidence and will exercise their discretion to determine what weight, if any, should be accorded to hearsay evidence in a particular case. In the absence of specific examples of abuse and in light of the significant support previously expressed by the majority of the commenters in favor of the admissibility of hearsay evidence, the FAA declines to change its rules to make hearsay evidence inadmissible.

Three commenters continue to raise concerns about an FAA employee's expert or opinion testimony in civil penalty actions. One comment may be based on a misreading of the revised rule. The commenter correctly cites the sentence added by the FAA in the April 1990 final rule that prohibits FAA counsel from calling a respondent's employee to give opinion testimony for the agency. However, the commenter cites the previous version of the first sentence of § 13.227. As revised, the rule now reads:

> An employee of the agency may not be called as an expert or opinion witness, for any party other than the agency, in any proceeding governed by this subpart.

The FAA replaced the word "testify" from the previous sentence with the phrase "be called" to address the concerns of the commenters. As stated in the preamble to the April 1990 final rule, the revised section "now addresses only an FAA employee's obligation to appear as an expert or opinion witness and the agency's ability to choose experts or opinion witnesses." 55 FR at 15120; April 20, 1990. To the extent that the commenter,s discussion is based on the previous language in § 13.227, the FAA is unable to determine if the commenter would object to the rule as revised in the April 1990 final rule and published for comment in the April 1990 NPRM.

EAA and the President of the NTSB Bar Association, and as AOPA acknowledged in its previous comments, "recognize the need for a prohibition of private persons from using the government as a source for expert testimony." But both commenters ask the FAA to explain again the rule's effect on the testimony of an FAA employee that the respondent may have consulted for advice about matters such as the airworthiness of an aircraft, acceptability of navigational equipment, or a method of aircraft construction. The commenters are concerned that if a person seeks the agency's advice, and a civil penalty action later is initiated on a related matter, the rules of practice will inhibit either the respondent's ability to call the FAA employee who gave the advice or respondent's ability to cross-examine an FAA employee who testifies as an expert or opinion witness on the issue.

In its discussion of the revisions to § 13.227 in the April 1990 final rule, the agency also discussed its expectations of how the rule would operate in practice.

> The FAA is satisfied that the rule, as amended, and its purpose are sufficiently clear to preclude a construction that would either (1) exclude a private party's otherwise admissible evidence of an opinion previously given by an FAA employee outside of the adjudicatory proceeding or (2) prevent or limit otherwise proper cross-examination of opinions given by an FAA employee on direct examination as a witness for the agency. The first example does not involve an employee's testimony for a non-FAA party. As to the second, we know of no instance in which an administrative law judge has relied on either the FAA's rule or its Departmental counterpart to limit the scope of otherwise proper cross-examination of an employee's testimonial opinions. The FAA is confident that an administrative law judge will rule properly in such situations and will do so without reference to the limitation in § 13.227.

55 FR at 15117–15120; April 20, 1990. During a hearing, counsel for the FAA is entitled to pose proper objections to a respondent's attempt to call an FAA employee as an expert on the respondent's behalf or to engage in improper cross-examination of an FAA witness. The respondent is entitled to pose the same objections regarding its witnesses. In either case, the administrative law judge will rule on any objections raised by either party regarding the proper scope of cross-examination or the factual character and content of the person's testimony, presumably based on the law judge's view of the validity of the objection and the reasons supporting that objection.

In the hypothetical set forth by EAA and the President of the NTSB Bar Association, the respondent may call an FAA employee as a fact witness. The agency employee could testify about factual matters, such as where and when the respondent sought the FAA employee's advice and the content of the advice provided by the employee, offered at the hearing for what was said, not its validity. The respondent is entitled to call his or her own expert or opinion witness to testify about the validity of that advice. If the FAA calls the agency employee (previously contacted for advice by the respondent), the respondent can ask the FAA employee factual questions to develop the factual record on the issue. If the FAA calls that employee as its expert or opinion witness in the action, the respondent may elicit factual testimony from that employee and cross-examine the employee about expert or opinion testimony given on direct examination at the hearing. As the FAA stated in the April 1990 final rule:

> Because both sentences [in § 13.227] now speak only to "calling" an expert or opinion witness, and not in terms of "testifying," this section should not restrict an FAA employee's factual testimony or a party's ability to cross-examine an opposing expert or opinion witness.

55 FR at 15120; April 20, 1990. The FAA is aware of its responsibility and ability to be a "source of information" on aviation matters and, as such, the aviation community should be able to seek freely and rely upon the FAA's advice. This traditional role of the agency is neither altered nor affected by the FAA's rules of practice, particularly as § 13.227 has been revised in the April 1990 final rule.

Evidence Related to Flight Data Recorders or Cockpit Voice Recorders

In comments to the August 1988 final rule, ATA suggested that the FAA amend § 13.222(b) to preserve expressly the "privilege that traditionally has attached" to information from flight data recorders (FDR) and cockpit voice recorders (CVR). In its comment to the April 1990 NPRM, ATA repeats this suggestion. Airborne also suggests that the FAA amend § 13.222 to include a "privilege or other exclusionary rule" to preclude admission of FDR and CVR information. Airborne states that the FAA's rule regarding the admissibility of evidence would allow admission of FDR and CVR data "even though such evidence is by statute or otherwise ruled inadmissible for any purpose other than accident and incident investigation." So as to "avoid unnecessary argument" if an FAA attorney tries to introduce hearsay FDR or CVR data, "and consistent with statute and regulation," Airborne argues that the rules of practice should expressly exclude such data, whether relevant or otherwise admissible.

To the extent that these commenters assume, or by their comments suggest, that there has ever been a restriction on the use of FDR data in evidence, the commenters are mistaken. FDR information is now and has always been admissible in enforcement actions. Indeed, § 13.7 specifically provides that, except to the extent that such use is specifically limited or prohibited, each record, document or report which is required to be maintained by the Administrator may be used in any civil penalty action, certificate action or other legal proceeding. The use of CVR information in evidence, however, is specifically limited in § 121.359(f) and § 135.151(c). Those sections state, in pertinent part:

> Information obtained from the record (produced by the cockpit voice recorder) is used to assist in determining the cause of accidents or occurrences in connection with investigations under part 830 (of the NTSB's regulations). The Administrator does not use the record in any civil penalty or certificate action.

No similar limitation applies to FDR information. *See* § 121.343(i) and § 135.152(e).

The FAA's rules of practice for civil penalty actions do not expressly or by implication amend the existing regulatory restrictions on the use of CVR information as evidence in an enforcement proceeding. The rules also do not change any existing policies or practices with regard to such use. As stated in the disposition of comments to the August 1988 final rule, the agency will continue to operate under existing rules, policies, and practice in handling information from cockpit voice recorders and flight data recorders. 54 FR at 11917; March 22, 1989. If an agency attorney attempts to introduce evidence based on CVR or FDR information in a civil penalty action, a respondent is free to object to admission of such evidence based either on the regulatory restrictions or policy arguments against such use.

Accordingly, no change to § 13.222 will be adopted in this rulemaking. Should the commenters desire reconsideration of agency policy with regard to the use of FDR information or regulatory changes with regard to restrictions on the use of CVR information in § 121.359 or § 135.151, the commenters are free to petition for such changes.

Written Arguments and Decisions

Despite the FAA's significant revision of the rules of practice dealing with written arguments and decisions, two commenters request changes to permit broader opportunities for, or to require, submission of written briefs in civil penalty actions. Airborne states that the FAA's changes regarding submission of written arguments and decisions in the April 1990 final rule do not go "far enough" and cases involving fines exceeding several thousand dollars "deserve the more deliberate and thoughtful proceedings which written advocacy and decision provide." Airborne advocates a distinction in the rules that gives "respondents a right to submit written submissions in cases over a specified dollar amount, for example, $5,000." Airborne also suggests that administrative law judges "should be encouraged by rule to submit written decision for penalties over a similar amount, with discretion to avoid such written decisions in appropriate case, provided reasons are stated on the record."

Both Airborne and a private attorney suggest that even the FAA's liberalization of the rules regarding written arguments and decisions appears to be contrary to or seem to depart from "the spirit if not letter of section 557(c) of the Administrative Procedure Act . * * *." Both commenters rely on the language in section 557(c) that states, in part, that "* * * the parties are *entitled to a reasonable opportunity to submit* * * *" certain information to a decisionmaker before a decision is issued. (Emphasis added.) Neither commenter cites any judicial or administrative decision or any specific instance of abuse of this perceived "right" to support their claim that the Administrative Procedure Act requires the agency's rules to provide for written submissions and decisions in all cases.

In the April 1990 final rule, mindful of the significant support for the proposition by the commenters, the agency amended the rules of practice to leave the decision of submission of written arguments and issuance of written decisions entirely to the administrative law judge. The agency will not here repeat its discussion of the amended rules related to this issue. 55 FR at 15120–15121; April 20, 1990. The FAA believes that the administrative law judges will properly discharge their obligation to provide a "reasonable opportunity" for submission of written arguments, in light of the facts and circumstances of a particular case before them. Moreover, administrative law judges are best able to determine the necessity for and the obligation to issue a written decision in a particular civil penalty action.

Authority of Administrative Law Judges

Two commenters, American Airlines and Airborne, suggest that the rules should be amended to provide administrative law judges with the power to award costs and fees, impose sanctions, and issue orders of contempt. American urges that administrative law judges should have the power to impose reasonable sanctions, particularly where a party is the subject of discovery abuses such as delayed or inappropriate responses to discovery. Airborne requests that § 13.205(b), which places limitations on the power of the administrative law judge, be eliminated from the rules unless the FAA can provide a justification for the rule.

The powers of an administrative law judge, as set forth in § 13.205, are based on the Administrative Procedure Act. Section 556(c) of the Administrative Procedure Act provides that a hearing officer may regulate the course of the hearing, "[s]ubject to published rules of the agency and within its powers." 5 U.S.C. 556(c). In accordance with section 556(c), administrative law judges are vested with enumerated powers only to the extent such powers have been given to the agency. See Attorney General's Manual on the Administrative procedure Act, at 123 (1947). Administrative law judges may not exercise authority which exceeds the authority granted to the agency or which exceeds the enumerated powers published in the agency's regulations. *See id.* at 123–124; *Western Airlines, Inc.*, FAA Docket 85–108(HM) at 8 (December 12, 1987).

Neither the Federal Aviation Act of 1958, as amended, nor the Hazardous Materials Transportation Act authorizes the FAA to cite a party for contempt or to impose costs or any other monetary sanction as a means of regulating abuses that may occur during the course of an administrative hearing. Since administrative law judges act for the agency and have only those powers which the agency itself possesses, they cannot exercise this authority as part of FAA's civil penalty assessment proceedings.

The source of the inherent power to punish contempt is Article III of the Constitution. *In re Seqoia Auto Brokers, Ltd., Inc.*, 827 F.2d 1281, 1284 (9th Cir. 1987). The agency is not an Article III court and, therefore, does not possess the inherent power to issue orders of contempt. *Western Airlines, Inc.*, at 8. While Congress may confer certain powers on agencies to regulate the conduct of persons who appear before them in adjudicatory hearings, and has done so for other agencies, it has not so

authorized the FAA or DOT. *Id.* Accordingly, DOT administrative law judges lack authority to issue orders of contempt to sanction the conduct of attorneys during FAA administrative hearings. While the agency and, accordingly, the administrative law judges do not have the power of contempt, they are not precluded from issuing orders that bar a person from a specific proceeding for obstreperous or disruptive behavior during that proceeding. *See*, § 13.205(b). Such exclusions are not based on an agency's power to regulate or discipline attorneys or the inherent power of contempt, but on the power to adjudicate, which includes the power to protect a proceeding from disruption. *Western Airlines, Inc.*, at 9. With regard to abuses of discovery, § 13.220 enables a law judge to sanction abusive conduct or protect against such abuses.

In view of the foregoing, the FAA believes there is a sound basis for § 13.205 of the rules of practice, and this section is adopted without change. The amendment urged by American and Airborne is beyond the authority of the FAA and has not been adopted. While the limitations on the administrative law judge's authority exist whether codified or not, the FAA believes these limitations should be set forth in a regulation in order to apprise all parties to a proceeding of the extent of the administrative law judges' authority.

Interlocutory Appeal

Several commenters (EAA, AOPA, ATA, American Airlines, and one private attorney) express concern about an interlocutory appeal of right available only to the FAA in the rules of practice. Section 13.219(c)(4) states, in pertinent part:

> A party may file an interlocutory appeal with the FAA decisionmaker, without the consent of the administrative law judge, before an initial decision has been entered in the case of * * * [a] ruling by the administrative law judge granting, in part, a respondent's motion to dismiss a complaint pursuant to § 13.218(f)(2)(ii).

Section 13.218(f)(2)(ii) states, in pertinent part:

> If the administrative law judge grants a motion to dismiss in part, the, agency attorney may appeal the administrative law judge's decision to dismiss part of the complaint under the provisions of § 13.219(c) (interlocutory appeals of right) of this subpart.

EAA objects to "any one party in an adjudicatory process" having the unilateral right of interlocutory appeal, and believes that whether to permit an interlocutory appeal should be left to the discretion of the administrative law judge. AOPA urges the FAA to eliminate the provision because it is "unfair and has the potential for abuse in unduly protracting litigation to the disadvantage of respondents." The private attorney objects to the "interlocutory appeal rights of the FAA" without further elaboration or discussion.

ATA, while noting that the provision "theoretically promotes efficient use of resources by avoiding piecemeal trials[,]" objects to the unilateral character of the provision. If the policy is correct, then both parties should be permitted to appeal decisions on motions to dismiss, subject to sanctions for frivolous appeals taken to delay the adjudicatory process. On the other hand, if the policy is without basis, then "neither side should be permitted to interrupt the trial process." American Airlines takes a position similar to ATA, although for reasons somewhat different from ATA. American asserts that there is "little to gain" by providing an interlocutory appeal of right for a partial dismissal of the agency's complaint, stating that such an appeal will "encourage piecemeal appeals" and "delay the adjudication on the merits" of the remainder of the case. American believes that if the FAA cannot show the necessary "harm" to support an interlocutory appeal for cause, then no interlocutory appeal should be allowed. According to American, any dismissal of part of the agency's complaint could be reviewed on appeal to the Administrator.

The agency notes that, although the language of § 13.218(f)(2)(ii) and § 13.219(c) referred only to agency attorneys, this provision reflected the fact that only agency attorneys issue complaints in these proceedings; thus, respondents generally will be the only parties filing a motion to dismiss under § 13.218(f)(2). That section was directed at respondents only and specifically provided that a "party may file a motion to dismiss a *complaint* instead of [filing] an answer * * *." (Emphasis added.) As would be expected, respondents generally would not appeal the dismissal of a portion of the agency's complaint. Nevertheless, the agency is amending § 13.219(c) because the rules do not provide a corresponding avenue of interlocutory appeal of right available to respondents if an administrative law judge grants an agency motion to dismiss all or part of a respondent's request for a hearing. The FAA is deleting § 13.219(c)(4) from the rules of practice and revising § 13.218(f)(2)(ii) accordingly.

The FAA believes that an interlocutory appeal of a partial dismissal of the initial documents (request for a hearing and complaint) filed in an action will promote efficient use of adjudicatory resources in the long run. If the Administrator reverses the administrative law judge's partial dismissal, then the entire case can be tried at the same time. The FAA is persuaded by ATA's comment that if the justification for the provision has merit, then both parties should be able to appeal a partial dismissal of the initial document filed in an action. The FAA also agrees with the comments of EAA and American, at least to the extent that the commenters believe that these appeals should not be available as of "right," but instead should be interlocutory appeals for cause granted in the discretion of the administrative law judge.

Therefore, the FAA is amending § 13.218(f)(2) so that both parties can file a motion to dismiss the first document filed in a civil penalty proceeding, either a complaint or a request for a hearing. Both parties also may file a written request for an interlocutory appeal for cause of a partial dismissal of one of these documents. An administrative law judge's dismissal of all of the complaint or dismissal of the request for a hearing may be appealed under the provisions of § 13.233, the general section on appeals from an initial decision.

Both ATA and American comment on the timeframe within which a notice of interlocutory appeal must be filed with the Administrator under § 13.219(d), both stating that three days is unduly burdensome and is an insufficient amount of time to prepare a proper appellate brief with supporting documents. ATA urges the FAA to provide "a week to prepare an opening brief and a week to prepare a reply." It is not clear whether "a week" means five working days, seven working days, or seven calendar days including weekends and holidays. American urges the FAA to revise the rule to provide (1) a 10-day period to file the appellate brief and (2) to clarify the action that triggers the time period for filing the appellate brief (either receipt, service, or issuance of the order forming the basis for the interlocutory appeal).

The FAA concurs with American's comment and is revising § 13.219(d) to provide a 10-day period (10 calendar days under § 13.212) to file an interlocutory appeal brief after service of the administrative law judge's order forming the basis of the interlocutory appeal. Although American preferred that receipt of the order would be the triggering event, establishing a person's receipt of documents can be extremely difficult. Under § 13.211(e) related to

service of documents by mail, an additional five days is added to any prescribed time period to account for delays that may be attributable to the mail service. Thus, the FAA believes the date of service is the appropriate event to trigger the 10-day time period for filing an interlocutory appeal brief.

Modification of Civil Penalty

The FAA made significant changes to § 13.232(a) that, as adopted in August 1988, required an administrative law judge to support a reduction of the civil penalty sought by the agency for an alleged violation. Many commenters objected to this requirement and, in response to those comments, the agency deleted the requirement from the rules of practice. In the April 1990 final rule, the FAA discussed the fact that this requirement had been deleted and the effect of § 13.232, as amended. 55 FR at 15121–15122; April 20, 1990. Nevertheless, EAA and the President of the NTSB Bar Association continue to assert that the rules of practice inhibit an administrative law judge's ability to modify a proposed civil penalty based on evidence presented at a hearing.

The President of the NTSB Bar Association criticizes the FAA's apparent reliance on the "highly criticized *Muzquiz* doctrine" (*Muzquiz. v. NTSB*, 2 NTSB 1474 (1975)) and asks the FAA to eliminate it from the agency's adjudicatory process. EAA echoes the same comment in nearly the same words, stating that elimination of "that doctrine is essential to fairness in any adjudicatory system." As early as the February 1990 NPRM and again in the April 1990 final rule, the agency noted that its rules of practice in this regard do not follow *Muzquiz*. *Muzquiz* is a decision of the NTSB, binding only on its administrative law judges. These comments seem to be misplaced because the FAA rule, even as adopted in August 1988, did not exist as articulated by the NTSB in *Muzquiz*. Moreover, in the April 1990 final rule, the agency revised § 13.232(a) to remove any appearance that *Muzquiz* was controlling.

Several commenters criticize the *Muzquiz* decision, and implicitly the agency's reliance on that decision, arguing that the NTSB should overrule its 1975 decision. Whether the NTSB ultimately overrules *Muzquiz* is not relevant here in light of the agency's proposed revision to § 13.232(a).

55 FR at 15121; April 20, 1990. It is not clear from the comments how the agency could further revise that section to address the commenter's general criticism.

As the agency has noted previously, a discussion of any sanction found appropriate by the law judge may prove useful to both parties, and any administrative or judicial adjudicator, on appeal of an administrative law judge's initial decision. *See* 55 FR at 7984; March 6, 1990. Moreover, the Administrative Procedure Act requires some articulation of the administrative law judge's sanction decision, at whatever level of detail deemed appropriate by the law judge. *See* 55 FR 15122; April 20, 1990. EAA understands "the utility of an articulation of the basis" for the administrative law judge's decision regarding the amount of a civil penalty. However, EAA objects to raising this requirement "to the level of having to subjectively satisfy the FAA's final decision maker who, under this system will be ruling *de novo*." EAA is mistaken: § 13.233 (b) and (j) limit the scope of appellate review and do not provide for *de novo* review of an initial decision.

New Issues on Appeal

In response to the February 1990 NPRM, several commenters (NACA, American Airlines, and one private attorney) objected to language in § 13.233(j)(1) that permitted the FAA decisionmaker to raise any issue, *sua sponte*, that is required for proper disposition of the proceedings. AOPA and the California Aviation Council raised this issue in comments to the August 1988 final rule. The commenters objected to the apparent failure of the rule to provide an opportunity to submit evidence (although the rule permitted additional argument) and develop the record on any "new" issue raised by the decisionmaker on appeal. Although the FAA stated that the rule, as previously written, adequately protected the parties, the FAA revised § 13.233(j) in the April 1990 final rule to make clear that the decisionmaker will remand a case for receipt of evidence, development of the record, and an initial decision related to that issue.

Only two commenters, one of whom raises this issue again, discuss this issue. EAA recommends a "further restriction" on the decisionmaker's ability to raise new issues on appeal. Despite the discussion in the April 1990 NPRM and the revisions to the section, EAA and one private attorney still claim that the section operates to the detriment of respondents. These two commenters believe that the section provides an opportunity for prosecutors, without a "reciprocal right" given to pilots, to raise new issues that should have been raised at the outset of the proceedings. Both commenters are mistaken, however, because this section refers only to the FAA decisionmaker's ability *sua sponte* to raise new issues. That section does not permit either party to raise new issues on appeal.

Section 13.233(j) essentially adopts a rule and practice enshrined in the NTSB's rules of appellate practice and procedure in appeals to the full Board of initial decisions issued by NTSB administrative law judges in certificate action proceedings. Section 821.49 of the NTSB's rules (49 CFR 821.49) states, in pertinent part:

> The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings, in which event a reasonable opportunity shall be afforded to the parties to submit argument thereon.

The Administrator may only raise a "new" issue where it is "required for proper disposition of the proceedings," ostensibly a higher standard than the NTSB's rule that permits the Board to raise a "new" issue that it "deems important to a proper disposition * * *." In light of the FAA's revision to permit the parties to submit evidence and develop the record on an issue raised by the Administrator, § 13.233(j) arguably provides more protection for the parties than is provided in the NTSB's rule. The FAA adopted the provision because it could benefit unrepresented respondents who may not have adequately briefed a relevant and dispositive issue. The FAA continues to believe that it will so operate in practice.

Moreover, the FAA is not aware of, and the commenters do not cite, any abuse of this section by the FAA decisionmaker in the proceedings conducted thus far (or by the NTSB, under its somewhat different standard). The FAA believes that the integrity of appellate decisionmakers in these proceedings, and the potential for judicial review of their decisions on this issue, ensure that both parties will be treated equally and fairly if this authority is exercised on appeal. Thus, the FAA declines to change that section of the rules of practice.

Delegation of Authority

ATA and American Airlines object to the language in § 13.16(c) that delegates the Administrator's authority "to initiate and assess civil penalties" to the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center. Specifically, these commenters contend that the delegation of authority "to assess" civil penalties on behalf of the Administrator should be withdrawn, because such a delegation "literally delegates the Administrator's

decisionmaking responsibilities to the agency's prosecutors."

The FAA does not agree with the conclusion that, by delegating to agency attorneys the authority to assess civil penalties in only two narrow circumstances discussed earlier, the Administrator has delegated his decisionmaking responsibilities. Civil penalties are assessed only under specific circumstances set forth in the rules of practice. Thus, the disputed delegation does not involve any of the Administrator's substantive decisionmaking functions, but pertains only to the ministerial assessment of civil penalties already determined—by rule or decision—to be warranted. The Administrator's authority substantively to "decide" cases has not been delegated to agency prosecutors. In accordance with a suggestion by American Airlines, the agency is amending the definition of "order assessing civil penalty" in the rules of practice. That definition states that an initial decision by an administrative law judge or a final decision and order of the Administrator, unless timely appealed, shall be considered an order assessing civil penalty where the adjudicator finds that a violation occurred and a civil penalty is warranted.

ATA also questions the Administrator's delegation of authority to the Chief Counsel and the Assistant Chief Counsel for Litigation to take certain minor and procedural actions on his behalf. *See* 55 FR 15094; April 20, 1990, ATA asserts that if the delegation is not restricted to appellate proceedings, "it trenches on the authority of administrative law judges." ATA states that the scope of the delegation is ambiguous, and suggests amending it to make clear that it applies only to appellate proceedings.

The FAA believes that it is clear from the delegation as currently written that it applies only to appellate proceedings. The delegation is made pursuant to § 13.202, which defines the term "FAA decisionmaker" as "the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker *on appeal*, or any person to whom the Administrator has delegated the Administrator's decisionmaking authority in a civil penalty action." (Emphasis added.) The current delegation is thus restricted as ATA suggests and, therefore, there is no reason to amend the delegation.

Sanction Criteria

American Airlines objects to what it views as the asymmetry of § 13.16(a)(1) concerning the respective criteria considered by the agency before assessing civil penalties for violations of the Hazardous Materials Transportation Act on the one hand and violations of the Federal Aviation Act of 1958, as amended, on the other. Previous commenters also have raised this objection.

Section 13.16(a)(4) states that an order assessing civil penalty for a violation of the Hazardous Materials Transportation Act or a rule, regulation, or order issued thereunder, will be issued only after consideration of certain enumerated factors. American believes that this section should provide for consideration of the same factors before an order assessing civil penalty is issued for a violation of the Federal Aviation Act or its implementing regulations.

American believes the rule is contrary to the procedures set forth in Order 2150.3A, which states that all civil penalties should be assessed in accordance with established criteria. Therefore, American recommends that the FAA either change the rule to provide that these criteria will be considered before a penalty is assessed for any violation or delete the criteria entirely from the regulation.

Section 13.16(a)(4) lists the factors that must be considered because the Hazardous Materials Transportation Act specifically requires that these factors be considered to determine the appropriate amount of civil penalty for a violation of the act or the hazardous materials regulations. Section 1809(a)(1) of the Hazardous Materials Transportation Act provides, in pertinent part:

> In determining the amount of such penalty, the Secretary (whose authority is delegated to the FAA Administrator for violations of the regulations pertaining to the transportation of hazardous materials by air) shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

Since the FAA is required by statute to consider these criteria before issuing an order assessing a civil penalty for a violation of the Hazardous Materials Transportation Act and the implementing regulations, the agency believes that they should be set forth in the regulation.

No such similar criteria are statutorily required to be considered for aviation safety and security violations under the Federal Aviation Act, as amended. However, as a matter of policy, the FAA has determined that similar criteria should be considered before assessing civil penalties against persons who violate the Federal Aviation Act or any rule, regulation, or order issued thereunder. The FAA believes that the criteria which are evaluated before a civil penalty is assessed under section 905 of the Federal Aviation Act of 1958, as amended, are more appropriately placed in agency orders, rather than in the regulations governing the initiation and hearing procedures of civil penalty actions. Agency guidelines directed to its own employees ordinarily are set forth in agency orders rather than in regulations. Indeed, these factors presently are set forth in Order 2150.3A, which is available to the public.

Accordingly, the FAA is not deleting the criteria listed in § 13.16(a)(4) or amending § 13.16(a) to provide that these criteria also will be considered before an order assessing civil penalty is issued for a violation of the Federal Aviation Act. Since, as a matter of policy, the FAA considers these criteria prior to a civil penalty assessment under section 905, a respondent is not prejudiced simply because this policy is set forth in an agency order rather than in a regulation.

Compromise Without a Finding of Violation

In the April 1990 final rule, the FAA announced a significant change, responsive to the desires of the commenters, to permit settlements without admissions or formal findings of a violation and amended the rules of practice to reflect this change in policy. In its comments to the April 1990 NPRM, American Airlines urges further modification of § 13.16 to notify respondents that agency attorneys may enter into compromise agreements under which a civil penalty is settled without a finding of a violation. Such settlements, which are within the discretion of agency attorneys, are expressly permitted under revised § 13.16(1)(1). American claims that a respondent may be unaware of the possibility of settlement of a civil penalty action, or when and how to propose such a settlement, because the prehearing procedures do not specifically refer to compromise as an option after receipt of a notice. Although the opportunity to compromise is not specifically listed as one of the options available after receipt of a notice, the section on compromise is set apart in the prehearing procedures as a separate section. That section also clearly states that the opportunity or option to compromise either the amount of a civil penalty or the entire civil penalty action is available at any time before the agency refers the action to

the U.S. Attorney for initiation of collection proceedings. Thus, § 13.16(1) as amended is sufficiently clear and the agency declines to amend further the prehearing procedures.

AOCI and AAAE are pleased that the agency incorporated their comments regarding compromise in the April 1990 final rule. AOCI and AAAE "assume that the fact that the agreement would expressly state that no finding of violation had been made by the FAA would preclude the admission of the compromise agreement as evidence of a violation in a subsequent civil case to which FAA is not a party." AOCI and AAAE ask the FAA to verify that understanding.

In the April 1990 final rule, the agency noted that changes to the rules were made, in part, to "* * * assure that orders in [cases compromised without a finding of violation] may not be used by the agency as evidence of a prior violation in civil penalty or certificate action proceedings." The agency addressed only subsequent use of a compromised civil penalty over which it has control, namely, determination of an appropriate sanction for future violations by the same respondent and use as evidence of a prior violation in a civil penalty or certificate action proceeding.

The agency can neither dictate nor affect, no matter what its intent on the issue, the practices and procedures of other entities such as the Department of Transportation, the National Transportation Safety Board, or Federal courts where a compromised civil penalty action may be in issue. This would be particularly true in "a subsequent civil case in which FAA is not a party." In such a case, it would be incumbent on the parties and the adjudicators in that proceeding, not the FAA, to determine the nature of the compromise and what use, if any, would made of the compromise agreement.

Comments Beyond the Scope of the April 1990 NPRM

1. Forum Shopping, Criteria for Selection of Sanction, and Double Jeopardy Considerations

AOPA cites two concerns regarding these issues: (1) Potential "forum shopping" by agency attorneys for prosecution of the same Federal Aviation Regulations against the same class of alleged violators, particularly AOPA's membership of aircraft owners and pilots; and (2) "subtle but real pressure" on one forum to become more responsive to the prosecutors as case law on procedural rules and substantive precedent develop in light of the "unreviewable discretion of the FAA prosecutors in selecting the remedy" for an alleged violation. While AOPA believes that these problems would not be eliminated so long as there are two separate fora to adjudicate alleged violations of the regulations, the problem could be "significantly mitigated" if the agency's prosecutorial discretion to select a remedy for an alleged violation is limited by rule and the FAA's rules are as "parallel as possible" to the NTSB's rules of practice. AOPA suggests that the agency establish procedures to prevent forum shopping and adopt a rule, based in part on the guidance in Order 2150.3A, to govern selection of an appropriate sanction.

Two commenters, EAA and one private attorney, object to the lack of guidance or regulatory provision in the rules of practice, setting forth the criteria used by the agency to determine whether certificate action or civil penalty action should be taken for a violation of the Federal Aviation Regulations. As stated previously, agency guidance to its employees is set forth in agency orders rather than in regulations. Guidance governing the agency's determination of the appropriate type of enforcement action for a violation is set forth in chapter 2 of Order 2150.3A. This guidance is supplemented by appendix 4 to Order 2150.3A, the Enforcement Sanction Guidance Table (hereinafter the "Sanction Guidance Table"). Chapter 2 addresses those circumstances where the agency will pursue certificate action rather than civil penalty action and also the situation where the agency may choose to initiate both certificate action and civil penalty action for the same violation. The Sanction Guidance Table, on the other hand, ensures consistency in the levels of sanctions proposed by the agency, providing a normal range of sanctions (civil penalty or certificate actions) for alleged first time violators who violate a single specified regulation.

As a matter of policy, the FAA refrains from pursuing civil penalty and punitive certificate actions (*e.g.*, a fixed term of suspension) for the same violation. While this policy does not preclude the agency from taking remedial certificate action (*e.g.*, revocation; indefinite suspension) and punitive civil penalty action for the same violation, this rarely occurs. Both types of certificate action may be taken only when an alleged violator demonstrates a lack of qualifications to hold a certificate issued by the FAA and, when the facts and circumstances surrounding the violation are so egregious, punitive civil penalty action also may be necessary to deter similarly-situated persons from committing similar violations.

Because this guidance is internal agency policy, used by FAA employees to perform their enforcement-related duties and responsibilities, the FAA believes that it is properly set forth in agency orders, rather than promulgated as a regulation. Accordingly, the FAA is not including a provision in the rules of practice specifically setting forth the criteria used by the agency to choose the type of enforcement action for a violation.

One private attorney argues that the rules should be "* * * 'clarified' to prohibit the agency from prosecuting a pilot twice before alternate tribunals for the same alleged violation." This attorney argues, both in response to the April 1990 NPRM and in previous submissions, that such clarification is necessary to ensure there is no violation of the Double Jeopardy clause of the Fifth Amendment to the U.S. Constitution. He states, in pertinent part:

> Assuming civil penalty actions are "quasi-criminal" in nature, no pilot who has prevailed in a § 609 suspension/revocation proceeding should again be placed in jeopardy in the context of a § 905 civil penalty action. [Footnote omitted.]

At the outset, it is unclear whether the Double Jeopardy clause would foreclose the subsequent initiation of a civil penalty action after disposition of certificate action against a pilot. *Compare Roach* v. *National Transp. Safety Bd.*, 804 F.2d1147, 1153–54 (10th Cir. 1986) (revocation or suspension of pilot certificate is not a criminal penalty), *with U.S.* v. *Halper*, 490 U.S. ———, 109 S. Ct. 1892, 1901–1902 (1989) (civil penalties may constitute punishment under Double Jeopardy clause). The FAA, however, as a matter of policy, will not initiate a civil penalty action against a certificate holder after a punitive certificate action for the same charges has been disposed of on its merits. *See* Order 2150.3A, paragraph 206(a)(3).

On rare occasions in the past, the FAA initiated a civil penalty action after dismissal of a suspension action under the NTSB's stale complaint rule. Because the resolution of the suspension action in such cases is not a decision on the merits, the agency does not consider subsequent initiation of a civil penalty action to trigger double jeopardy considerations.

The FAA's policy, however, is not to institute civil penalty and punitive certificate actions against a certificate holder for the same offense. This policy

does not preclude taking remedial certificate action, most typically revocation, and civil penalty action based on the same violation, although the occasions for seeking both sanctions have historically been few. *Id.* Accordingly, the FAA believes that its policy is consonant with the principles reflected in the Double Jeopardy clause, and therefore, no additional assurance need be codified in the rules of practice governing hearings in civil penalty actions.

2. Termination of the FAA's Authority to Assess Civil Penalties or Transfer of the Authority to the NTSB.

In their comments to the agency's rulemaking docket, several commenters (AOPA, EAA, the President of the NTSB Bar Association, ALPA, and several individuals and private attorneys) continue to object to administrative adjudication of civil penalties within the FAA and urge that the civil penalty assessment authority be transferred to the NTSB. While some commenters admit that any transfer to another entity or agency is not required as a matter of law, they assert that it should be done as a matter of sound public policy. The commenters suggest a variety of solutions and different recommendations regarding termination of the authority or transfer of the authority.

Not all commenters, however, advocate a transfer or termination of the FAA's administrative assessment authority. NBAA supports the agency's administrative process due to, in NBAA's words, the "lack of interest" expressed by "most" U.S. Attorneys in pursuing civil penalty actions against individuals on the agency's behalf. NBAA states that the agency's administrative civil penalty authority is necessary because "it recognizes the safety-based value of an expeditious and fair resolution of these cases." In a letter to Senator Wendell Ford, dated April 24, 1990, the President of ATA also noted that organization's support for a 2-year extension of the agency's general assessment authority. The President of ATA stated, in pertinent part:

> I am pleased to advise you that ATA believes the proposed rules, as modified and with the fine tuning that should result from the rulemaking process, can now provide the procedural framework for fair and impartial administrative proceedings. * * * We recognize and appreciate the fact that the FAA has modified these rules of procedure considerably since they were originally promulgated in September 1988, and our members look forward to working with the FAA to see that the program fulfills its original objectives—speedy resolution of alleged violations and enhanced vigilance in the safety and security operations of the industry.

Moreover, notwithstanding the recommendation of its consultant, the Administrative Conference "takes no position at this time on whether the adjudication of civil penalty actions * * * should remain a function of the DOT, or whether it should be shifted to the NTSB." In rejecting the consultant's recommendation, the Chairman of the Administrative Conference notes that "There are arguments on both sides." The Chairman has indicated, however, the Administrative Conference's interest, if Congress extends the agency's assessment authority, to study further "the question of whether the Federal Aviation Administration or the National Transportation Safety Board is the more appropriate agency to adjudicate civil penalty cases." (Chairman Breger's letters to Congress, transmitting Recommendation 90–1, dated June 20, 1990.)

As the agency has stated previously, termination of the authority or transfer of the authority is outside the scope of the rulemaking and beyond the power of the FAA to accomplish by regulation. Also, the FAA is not the appropriate recipient of one commenter's suggestion for "close Congressional oversight"of the continuing implementation of the authority. These issues are legislative matters solely for Congress to consider and resolve. The position of the Federal Aviation Administration and the Department of Transportation, supporting not only retention but permanent extension of the agency's general civil penalty assessment authority, has been articulated previously and will not be repeated here.

One commenter states that "The entire concept of Civil Penalty Assessment or Civil Penalty Actions for fines of $50,000 or less should be discarded." When this comment is read in the context of the discussion that follows however, the commenter seems to advocate adjudication by an agency separate from the Department of Transportation and the FAA. Although the commenter believes that there is no provision for "review and modification of the original findings * * * by a court[,]" the rules of practice specifically state that judicial review of a final decision and order of the Administrator in these actions is available. See § 13.6(k) as renumbered herein and § 13.235 of the rules of practice.

Two commenters, ALPA and EAA, assert that the FAA's "goal" in seeking administrative assessment authority and retaining jurisdiction over civil penalty adjudication is to address alleged violations of airport and air carrier security regulations. Without citing specific support for the assertion, these commenters contend that the primary reason for the legislation granting administrative authority to the FAA was to provide for adjudication of alleged security violations. This perception is raised for the first time in this rulemaking. The perception may mistakenly arise from the large number of civil penalty actions not exceeding $50,000 initiated against air carriers for alleged security violations after the rules were adopted; it is rebutted, however, by the very few civil penalty cases initiated against airport operators. It simply is not true that the agency sought the general civil penalty assessment authority solely to enforce air carrier and airport security regulations. As the agency stated in the August 1988 final rule,

> During preliminary Senate discussions of the proposed civil penalty amendment, Congress noted the FAA's lack of statutory authority to "prosecute violators of (the Federal Aviation Regulations)" without referring those actions to the United States Attorney for prosecution in a United States District Court. Congress observed that the inability or failure of the United States Attorney to prosecute civil penalty actions resulted in an ineffective deterrent to individuals or entities who violate the Federal Aviation Regulations. Congress determined that "there clearly is a need" for administrative hearings, tried and heard by the FAA, to provide effective enforcement of the FAA's safety regulations. * * * The amendment enables the FAA to circumvent the complex and lengthy process of referring these civil penalty cases to the United States Attorney (for prosecution and adjudication) and, therefore, to strengthen the FAA's enforcement process. Under the 1987 amendment, the FAA may prosecute civil penalty actions without referring the action to the United States Attorney for prosecution in a United States District Court.

53 FR at 34646; September 7, 1988. Neither the legislative history nor the statutory amendment contain any indication that either the agency or Congress intended the general civil penalty assessment authority to apply only to the limited area of air carrier or airport operator alleged violations of security regulations.

3. *Equal Access to Justice Act.*

Two individuals comment on the FAA's EAJA regulations. One commenter chides the FAA for its "failure to address the applicability of the Equal Access to Justice Act." This commenter articulated the same criticism in response to the February 1990 NPRM. In the April 1990 final rule,

the agency again specifically indicated that EAJA applies to these proceedings.

The FAA issued an NPRM, requesting comment on proposed EAJA regulations, on July 10, 1989. 54 FR 29978; July 17, 1989. Four comments were received on the NPRM and considered by the agency before promulgation of an interim final rule. The FAA issued an interim final rule implementing EAJA regulations on October 27, 1989. 54 FR 46196; November 1, 1989. The interim final rule is effective until such time as the Department-wide EAJA regulations are updated and incorporate the civil penalty adjudications before the agency. The agency's EAJA regulations are contained in part 14 of the Federal Aviation Regulations

54 FR at 15127; Aril 20, 1990.

The other commenter essentially criticizes § 14.05, the provision on allowable fees and expenses. The commenter notes that this provision is worded differently from the analogous NTSB provision, in that the FAA specifically provides that, "Fees may be awarded for work performed after the issuance of a complaint." *See* § 14.05(e). The NTSB regulation does not contain such a provision. The commenter believes that, "The restriction on fees and expenses which a pilot may recover is another illustration of the Agency's lack of qualifications to adjudicate aircraft operations and maintenance cases internally."

Concerns about the EAJA regulations, which are contained in part 14 of the Federal Aviation Regulations, are not within the scope of this rulemaking. Commenters wishing to recommend substantive changes to part 14 may submit a petition for rulemaking, which the agency will review at that time. However, in an effort to be responsive to this commenter, the agency will repeat the sequence of events which led to the adoption of the EAJA provision in question.

When the Equal Access to Justice Act was enacted, both the Department of Justice and the Administrative Conference of the United States published model regulations that other Executive branch agencies could implement. Both model rules were silent with regard to when the eligibility for an award of attorney fees begins to accrue. The NTSB adopted the model regulations, which is why its regulations are also silent on this issue. When the FAA issued its proposed EAJA regulations, such regulations were also based on the model regulations that had been issued several years ago. Like the model regulations and the NTSB regulation, the FAA's proposed regulation was silent on the issue of when the eligibility for an award of attorney fees begins to accrue. As discussed in the preamble to the interim final rule, § 14.05 was added in response to a comment submitted by ATA, which stated that the regulation as proposed was ambiguous.

The provision of the interim final rule that resulted, and to which this commenter objects, is derived from the statutory language. In the preamble to the interim final rule, the agency stated:

While the FAA recognizes that legal advice and associated expenses may begin to accrue as early as when a party receives a letter of investigation, the EAJA authorizes reimbursement for legal expenses incurred only in connection with an "adversary adjudication," which is defined in the EAJA as "an adjudication under section 554 of this title[.]" 5 U.S.C. 504(b)(1)(C). A section 554 adjudication is one "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. 554(a). The eligibility for an EAJA award, therefore, is triggered when the party in question is offered the opportunity for an agency hearing. In terms of the FAA Rules of Practice, the opportunity for a hearing arises only when the FAA issues (a complaint), which begins the adversary adjudication. Consequently, legal expenses that are incurred before that time are not incurred in connection with an adversary adjudication and thus not covered by the EAJA and this regulation.

54 FR at 46198; November 1, 1989.

The FAA's EAJA regulations, including the provision in question and the above discussion, were reviewed by the Department of Justice before they were adopted by the FAA. The Department of Justice is the principal agency with regard to EAJA matters. The Department of Justice did not, at that time, object either to the provision or the FAA's interpretation of EAJA. Based on the concern of this commenter, the agency once again contacted the Department of Justice to inquire as to the soundness of the FAA interpretation.

After discussing the matter internally, the Department of Justice informed the FAA that it adheres to its view that the FAA's interpretation is reasonable and consistent with the statute. Therefore, the agency elects not to revise § 14.05 as requested.

4. *Applicability of Compromise Policy to Closed Cases.*

In the summary preceding the preamble to the February 1990 NPRM, the FAA indicated its willingness to consider applying any rule changes to pending civil penalty actions "where appropriate." During a public meeting on March 12, 1990, the agency solicited comment on whether and to what extent any changes should be applied to cases already initiated, including cases that had been resolved. Several commenters suggested that the agency's revised compromise policy should be applied to cases currently in some phase of the administrative civil penalty process. In the preamble to the April 1990 final rule, the FAA addressed those comments, stating:

Although the agency will not entertain requests to re-open closed cases for the purpose of considering a compromise without a finding, the agency will consider, on a case-by-case basis, whether and how to use a previously-issued order assessing civil penalty in any future case.

NACA objects to the FAA's application of its revised compromise policy to pending cases only. Because some carriers paid a civil penalty for "minor violations" before the agency changed its compromise policy, NACA asserts that "equity would dictate that all cases settled" under the previous policy should be "adjusted, on motion of an affected party," to permit compromise without a finding of violation, particularly in light of the April 13 decision issued by the court of appeals.

The FAA carefully reviewed the numerous comments and recommendations on this issue, and considered such factors as administrative burdens and benefits to respondents, to determine whether and to what extent the revised policy should be applied to cases already initiated, including resolved cases. In light of all those factors, including the fact that over 1800 cases had been resolved by the issuance of an order assessing civil penalty, the FAA reached what it considers to be an equitable resolution of the competing interests involved here. NACA did not provide any data showing the number of carriers who would not have paid a proposed civil penalty if the new compromise policy had been available at the time. Moreover, it is not clear how many respondents paid a civil penalty without availing themselves of the opportunity for a hearing or an appeal because an alleged violation actually occurred and, therefore, was not contested. To the extent the FAA has indicated its willingness to consider whether and how to use a previous order that contains a finding of violation, the agency believes that the respondents have been treated fairly and accorded such benefit as can be achieved.

Contrary to NACA's reliance on the court's April 13 decision, the rules were invalidated based solely, in the court's opinion, on the procedural defect of failing to provide notice and a prior opportunity for comment on the rules of practice. The court's decision did not address any substantive challenges or issues regarding the agency's rules or the agency's policies, including its civil

penalty compromise policy. Thus, the agency is not required to reopen closed cases to provide an opportunity for settlement without a formal finding of violation.

4. Airport Liability

AOCI and AAAE continue to urge review of the agency's policy of proposing "* * * civil Penalties against publicly-owned airports for the acts and omissions of airport tenants not under the airports' control on the basis of strict liability. * * *" As the FAA has stated, this issue is technically and practically beyond the scope of this rulemaking and is more appropriately addressed as a matter of policy or possibly in other rulemaking actions. *See* 55 FR at 5127; April 20, 1990. Citation by AOCI and AAAE of a report of the Senate Commerce, Science and Transportation Committee (Report 101–188), urging the FAA to reconsider its policy, does not alter the fact that this issue cannot and should not be resolved in this rulemaking action.

Regulatory Evaluation

The FAA has determined that this final rule is not a major action under the criteria of Executive Order 12291; thus, the FAA is not required to prepare a Regulatory Impact Analysis under either the Executive Order of the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

In nonmajor rulemaking actions, the DOT Regulatory Policies and Procedures require the FAA to prepare a regulatory evaluation, analyzing the economic consequences of proposed regulations and quantifying, to the extent practicable, the estimated costs and anticipated benefits and impacts of regulations. The FAA believes that the changes to the rules of practice adopted in this document, aimed primarily at "matters of policy and prudence" in one commenter's words, do not in any economic terms significantly alter the basic process by which civil penalties not exceeding $50,000 are adjudicated within the agency. Rather, these changes address only several additional sections of the rules not previously the subject of criticism or specific comment by the aviation industry or not yet amended by the agency in previous rulemaking actions. For example, sections amended in this document simplify the prehearing procedures in civil penalty actions, define more precisely service of documents and pleadings in civil penalty actions, delete several provisions determined to be unnecessary or redundant, refine the rules of practice as suggested by the commenters. Previous revisions to the rules, made effective by notice given in this document, changed the designation of a document filed in civil penalty actions, expanded certain sections of the rules to reflect existing statutes or regulations, eliminated provisions perceived by some to favor the agency, and expanded the discretion of an administrative law judge in several areas.

The FAA did not identify, and the commenters did not provide, any specific economic consequences that can be attributed to the procedural changes adopted in this final rule. The FAA anticipates that the changes adopted herein will not result in any costs to respondents or the agency. However, adoption of the changes in the final rules could generate cost-relieving benefits to the agency and respondents, although to what extent has not been determined. If there are any costs or benefits associated with the changes to specific sections of the rules, the FAA expects their value, if any, to be minimal under the criteria of applicable Executive Orders, statutes, or regulations. Since there are no costs expected to accrue from this rule and only minimal benefits expected, the FAA is not required to prepare a full regulatory evaluation of the changes adopted in this final rulemaking document.

Nevertheless, the agency reviewed the amendments adopted herein to determine if there were any economic consequences attributable to adopting the proposals in the April 1990 NPRM. The FAA specifically requested that the commenters discuss any economic consequences so that the FAA could prepare, if necessary, a full regulatory evaluation of the changes to the rules of practice or the agency's policies. The commenters did not submit for the agency's review any data regarding potential costs or expected benefits and impacts of any changes or proposals in the April 1990 NPRM or suggestions made by commenters.

The commenters did not discuss any significant economic impact, positive or negative, on small entities, as those terms are defined in the Regulatory Flexibility Act of 1980, that would arise by adopting the proposals in the April 1990 NPRM. Commenters also failed to note any expected impact on trade opportunities for U.S. firms operating outside the United States or foreign firms operating within the United States. As anticipated in the NPRM, the FAA believes that neither small entities nor trade opportunities for businesses will be affected by amendment of the rules of practice as discussed herein. The commenters did not identify or discuss any Federalism issues that may be adversely affected if the proposals were adopted. It was the FAA's preliminary opinion in the NPRM and current opinion in this final rule that the changes adopted by the FAA do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment under the criteria of Executive Order 12612.

Conclusion

The FAA has determined that the final rule is not a major regulation under the criteria of Executive Order 12291 and, thus, this rulemaking action does not warrant preparation of a Regulatory Impact Analysis. The FAA also certifies that the changes adopted in this final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because neither the FAA nor the commenters have identified any specific economic consequences associated with the changes, and the agency expects little or no cost or benefit to accrue from the changes, preparation of a full regulatory evaluation is not required. Because of the interest expressed by the public on the rules of practice, the FAA has deterined that this final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

The Amendments

Accordingly, the FAA amends part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484–1489, 1523 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1471(a)(3) (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 U.S.C. App. 1475 (Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act, as revised, 49 U.S.C. 106(g)); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and

Airway Safety and Capacity Expansion Act of 1987)); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.16 is revised to read as follows:

§ 13.6 Civil penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding $50,000; Hazardous Materials Transportation Act.

(a) *General.* The following penalties apply to persons who violate the Federal Aviation Act of 1958, as amended, and the Hazardous Materials Transportation Act:

(1) Any person who violates any provision of title III, V, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 901 of the Federal Aviation Act, of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(2) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Act for each violation in accordance with section 404(d) or section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1374, 1471, *et seq.*).

(3) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not more than $10,000 for each violation of title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*).

(4) Any person who knowingly commits an act in violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $10,000 for each violation in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1471 and 1809, *et seq.*). An order assessing civil penalty for a violation under the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, will be issued only after consideration of—

(i) The nature and circumstances of the violation;

(ii) The extent and gravity of the violation;

(iii) The person's degree of culpability;

(iv) The person's history of prior violations;

(v) The person's ability to pay the civil penalty;

(vi) The effect on the person's ability to continue in business; and

(vii) Such other matters as justice may require.

(b) *Order assessing civil penalty.* An order assessing civil penalty may be issued for a violation described in paragraph (a) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (e)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

(3) Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

(4) Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(c) *Delegation of authority.* The authity of the Administrator, under section 901 and section 905 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, to initiate and assess civil penalties for a violation of those Acts, or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center. The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties, is delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and the Assistant Chief Counsel for a region or center.

(d) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder. A notice of proposed civil penalty will be sent to the individual charged with a violation or to the president of the corporation or company charged with a violation. In response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation shall—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order shall be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(e) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph (d)(2) of this section or failure to respond in a tim1y manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to

receive documents in that civil penalty action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

(i) If the person charged with a violation fails to respond to the notice of proposed civil penalty within 30 days after receipt of that notice; or

(ii) If the parties participated in any informal procedures under paragraph (d)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order shall be issued in that amount; or

(ii) Request a hearing in which case a complaint shall be filed with the hearing docket clerk.

(f) *Request for a hearing.* Any person charged with a violation may request a hearing, pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing shall file a written request for a hearing with the hearing docket clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk) and shall mail a copy of the request to the agency attorney. The request for a hearing may be in the form of a letter but must be dated and signed by the person requesting a hearing. The request for a hearing may be typewritten or may be legibly handwritten.

(g) *Hearing.* If the person charged with a violation requests a hearing pursuant to paragraph (d(3) or paragraph (e)(2)(ii) of this section, the original complaint shall be filed with the hearing docket clerk and a copy shall be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge shall issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that contains findings or conclusions on the allegations contained, and the civil penalty sought, in the complaint.

(h) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to § 13.233 of subpart G, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator have been entered on the record. The FAA decisionmaker shall review the record and issue a final decision and order of the Administrator that affirm, modify, or reverse the initial decision. The FAA decisionmaker may assess a civil penalty but shall not assess a civil penalty in an amount greater than that sought in the complaint.

(i) *Payment.* A person shall pay a civil penalty by sending a certified check or money order, payable to the Federal Aviation Administration, to the agency attorney.

(j) *Collection of civil penalties.* If a person does not pay a civil penalty imposed by an order assessing civil penalty or a compromise order within 60 days after service of the order, the Administrator may refer the order to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings to collect the civil penalty. The action shall be brought in a United States District Court, pursuant to the authority in section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), or section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809).

(k) *Exhaustion of administrative remedies.* A party may only petition for review of a final decision and order of the Administrator to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant to section 1006 of the Federal Aviation Act of 1958, as amended. Neither an initial decision or order issued by an administrative law judge, that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action constitutes a final order of the Administrator for the purposes of judicial appellate review under section 1006 of the Federal Aviation Act of 1958, as amended.

(l) *Compromise.* The FAA may compromise any civil penalty action initiated in accordance with section 901 and section 905 of the Federal Aviation Act of 1958, as amended, involving an amount in controversy not exceeding $50,000, or any civil penalty action initiated in accordance with section 901 of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, at any time before referring the action to the United States Attorney for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees to make no finding of violation. Pursuant to such agreement, a compromise order shall be issued, stating:

(i) The person agrees to pay a civil penalty.

(ii) The FAA makes no finding of a violation.

(iii) The compromise order shall not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of any civil penalty proposed in a notice, assessed in an order, or imposed in a compromise order.

3. Part 13, subpart G, (§§ 13.201 to 13.235) is revised to read as follows:

Subpart G—Rules of Practice in FAA Civil Penalty Actions

Subpart G—Rules of Practice in FAA Civil Penalty Actions

§ 13.201 Applicability.

(a) This subpart applies to the following actions:

(1) A civil penalty action in which a complaint has been issued for an amount not exceeding $50,000 for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), or a rule, regulation, or order issued thereunder.

(2) A civil penalty action in which a complaint has been issued for a violation arising under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, *et seq.*) and the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), or a rule, regulation, or order issued thereunder.

(b) This subpart applies only to proceedings initiated after September 7, 1988. All other cases, hearings, or other proceedings pending or in progress before September 7, 1988, are not affected by the rules in this subpart.

(c) Notwithstanding the provisions of paragraph (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator:

(1) Which involves an amount in controversy in excess of $50,000;

(2) Which is an *in rem* action or in which an *in rem* action based on the same violation has been brought;

(3) Regarding which an aircraft subject to lien has been seized by the United States; and

(4) In which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

§ 13.202 Definitions.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Assistant Chief Counsel for a region or center, or an attorney on the staff of the Assistant Chief Counsel for Regulations and Enforcement or the Assistant Chief Counsel for a region or center who prosecutes a civil penalty action. An agency attorney shall not include the Chief Counsel, the Assistant Chief Counsel for Litigation, or any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker regarding an initial decision or any appeal to the FAA decisionmaker or who is supervised in that action by a person who provides such advice in a civil penalty action.

Attorney means a person licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

Complaint means a document issued by an agency attorney alleging a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder that has been filed with the hearing docket after a hearing has been requested pursuant to § 13.16(d)(3) or § 13.16(e)(2)(ii) of this part.

FAA decisionmaker means the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal, or any person to whom the Administrator has delegated the Administrator's decisionmaking authority in a civil penalty action. As used in this subpart, the FAA decisionmaker is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

Mail includes U.S. certified mail, U.S. registered mail, or use of an overnight express courier service.

Order assessing civil penalty means a document that contains a finding of violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder and may direct payment of a civil penalty. Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Party means the respondent or the Federal Aviation Administration (FAA).

Personal delivery includes hand-delivery or use of a contract or express messenger service. "Personal delivery" does not include the use of Government interoffice mail service.

Pleading means a complaint, an answer, and any amendment of these documents permitted under this subpart.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.

Respondent means a person, corporation, or company named in a complaint.

§ 13.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, shall be prosecuted by an agency attorney.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action shall not, in that case or a factually-related case, participate or give advice in a decision by the administrative law judge or by the FAA decisionmaker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, or attorneys on the staff of the Assistant Chief Counsel for Litigation will advise the FAA decisionmaker regarding an initial decision or any appeal of that civil penalty action to the FAA decisionmaker.

§ 13.204 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a party may file a notice of appearance in the action, in the manner provided in § 13.210 of this subpart, and shall serve a copy of the notice of appearance on each party, in the manner provided in § 13.211 of this subpart, before participating in any proceeding governed by this subpart. The attorney or representative shall include the name, address, and telephone number of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document upon payment of reasonable costs. A person may keep an original

document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

§ 13.205 Administrative law judges.

(a) *Powers of an administrative law judge.* In accordance with the rules of this subpart, an administrative law judge may:

(1) Give notice of, and hold, prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Make findings of fact and conclusions of law, and issue an initial decision.

(b) *Limitations on the power of the administrative law judge.* The administrative law judge shall not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right with the FAA decisionmaker pursuant to § l3.219(c)(4) of this subpart. This section does not preclude an administrative law judge from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(c) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to § 13.218(f)(6), requesting that an administrative law judge be disqualified from the proceedings.

§ 13.206 Intervention.

(a) A person may submit a motion for leave to intervene as a party in a civil penalty action. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days before the hearing.

(b) If the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings, the administrative law judge may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

§ 13.207 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative shall sign each document tendered for filing with the hearing docket clerk, the administrative law judge, the FAA decisionmaker on appeal, or served on each party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the FAA decisionmaker shall:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

§ 13.208 Complaint.

(a) *Filing.* The agency attorney shall file the original and one copy of the complaint with the hearing docket clerk, or may file a written motion pursuant to § 13.218(f)(2)(i) of this subpart instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing.

The agency attorney should suggest a location for the hearing when filing the complaint.

(b) *Service.* An agency attorney shall personally deliver or mail a copy of the complaint on the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action.

(c) *Contents.* A complaint shall set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

(d) *Motion to dismiss allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

(1) An administrative law judge may not grant the motion and dismiss the complaint or part of the complaint if the administrative law judge finds that the agency has shown good cause for any delay in issuing the notice of proposed civil penalty.

(2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued the notice of proposed civil penalty to the respondent.

(3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint or any part of the complaint in accordance with § 13.219(b) of this subpart.

§ 13.209 Answer.

(a) *Writing required.* A respondent shall file a written answer to the complaint, or may file a written motion pursuant to § 13.208(d) or § 13.218(f)(1–4) of this subpart instead of filing an answer, not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

(b) *Filing and address.* A person filing an answer shall personally deliver or mail the original and one copy of the answer for filing with the hearing docket clerk, not later than 30 days after service

of the complaint, to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. The person filing an answer should suggest a location for the hearing when filing the answer.

(c) *Service.* A person filing an answer shall serve a copy of the answer on the agency attorney who filed the complaint.

(d) *Contents.* An answer shall specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer.

(e) *Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

(f) *Failure to file answer.* A person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.

§ 13.210 Filing of documents.

(a) *Address and method of filing.* A person tendering a document for filing shall personally deliver or mail the signed original and one copy of each document to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. A person shall serve a copy of each document on each party in accordance with § 13.211 of this subpart.

(b) *Date of filing.* A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(c) *Form.* Each document shall be typewritten or legibly handwritten.

(d) *Contents.* Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested in the document.

§ 13.211 Service of documents.

(a) *General.* A person shall serve a copy of any document filed with the Hearing Docket on each party at the time of filing. Service on a party's attorney of record or a party's designated representative may be considered adequate service on the party.

(b) *Type of service.* A person may serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document tendered for filing with the hearing docket clerk. A certificate of service shall consist of a statement, dated and signed by the person filing the document, that the document was personally delivered or mailed to each party on a specific date.

(d) *Date of service.* The date of service shall be the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period.

(f) *Service by the administrative law judge.* The administrative law judge shall serve a copy of each document including, but not limited to, notices of prehearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings by personal delivery or by mail.

(g) *Valid service.* A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service shall be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

(h) *Presumption of service.* There shall be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

§ 13.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge, or by any applicable statute.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or a legal holiday. If the last day of the time period is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§ 13.213 Extension of time.

(a) *Oral requests.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the administrative law judge shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk. The administrative law judge may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Written motion.* A party shall file a written motion for an extension of time with the administrative law judge not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed.

§ 13.214 Amendment of pleadings.

(a) *Filing and service.* A party shall file the amendment with the administrative law judge and shall serve a copy of the amendment on all parties to the proceeding.

(b) *Time.* A party shall file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer

only for good cause shown in a motion to amend.

(c) *Responses.* The administrative law judge shall allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the administrative law judge.

§ 13.215 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge shall dismiss the proceedings under this subpart with prejudice.

§ 13.216 Waivers.

Waivers of any rights provided by statute or regulation shall be in writing or by stipulation made at a hearing and entered into the record. The parties shall set forth the precise terms of the waiver and any conditions.

§ 13.217 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties shall file the joint schedule with the administrative law judge, setting forth the dates to which the parties have agreed, and shall serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party shall sign the original joint schedule to be filed with the administrative law judge.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The administrative law judge shall approve the joint schedule filed by the parties. One party shall submit a draft order establishing a joint schedule to the administrative law judge to be signed by the administrative law judge and filed with the hearing docket clerk.

(e) *Disputes.* The administrative law judge shall resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the administrative law judge's order establishing a joint schedule, the administrative law judge may direct that party to comply with a motion to discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the administrative law judge may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing, or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 13.218. Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart shall do so by motion. A party shall comply with the requirements of this section when filing a motion with the administrative law judge. A party shall serve a copy of each motion on each party.

(b) *Form and contents.* A party shall state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party shall attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party shall file any prehearing motion, and shall serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the administrative law judge directs otherwise.

(d) *Answers to motions.* Any party may file an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge shall rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge shall resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge shall resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge shall serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge shall issue rulings and orders in writing and shall serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* A party may file the following motions with the administrative law judge:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent shall file an answer not later than 10 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of the Federal Aviation Act of 1958, as amended, or a rule, regulation, or order issued thereunder, or a violation of the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under § 13.219(b) of this subpart.

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney shall file the complaint and shall serve a copy of the complaint

on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to § 13.233 of this subpart. If required by the decision on appeal, the agency attorney shall file a complaint and shall serve a copy of the complaint on each party not later than 10 days after service of the decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer. If the motion to dismiss is not granted, the respondent shall file an answer and shall serve a copy of the answer on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to § 13.233 of this subpart. If required by the decision on appeal, the respondent shall file an answer and shall serve a copy of the answer on each party not later than 10 days after service of the decision on appeal.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading which requires a response under this subpart. A party shall set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and shall submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the administrative law judge grants the motion, the agency attorney shall supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the administrative law judge shall strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent shall file an answer and shall serve a copy of the answer on each party not later than 10 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the administrative law judge grants the motion, the respondent shall supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge shall strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party shall file a motion to strike with the administrative law judge and shall serve a copy on each party before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(5) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge shall grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(6) *Motion for disqualification.* A party may file a motion for disqualification with the administrative law judge and shall serve a copy on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but shall make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party shall state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party shall submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party shall respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge shall render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge shall withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge shall deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with § 13.219(b) of this subpart.

§ 13.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review under section 1006 of the Federal Aviation Act of 1958, as amended.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the administrative law judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge shall grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal with the FAA decisionmaker, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings.

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 13.215 of this subpart.

(3) A ruling or order by the administrative law judge in violation of § 13.205(b) of this subpart.

(d) *Procedure.* A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall serve a copy of the notice and supporting documents on each party and the administrative law judge, not later than 3 days after the administrative law judge's decision forming the basis of the appeal. A party shall file a reply brief, if any, with the FAA decisionmaker and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. If the FAA decisionmaker does not issue a decision on the interlocutory appeal or does not seek additional information within 10 days of the filing of the appeal, the stay of the proceeding is dissolved. The FAA decisionmaker shall render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 13.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and response with the administrative law judge or the hearing docket clerk. In the event of a discovery dispute, a party shall attach a copy of these documents in support of a motion made under this section.

(c) *Service on the agency.* A party shall serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party shall respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days of service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge shall limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidential orders.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the administrative law judge and shall serve a copy of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge shall preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge shall provide:

(i) An opportunity for review of the document by the parties off the record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties shall not disclose the information in any manner and the parties shall not use the information in any other proceeding.

(h) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order with the administrative law judge and shall serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party shall supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party shall supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party shall supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* The following rules apply to depositions taken pursuant to this section:

(1) *Form.* A deposition shall be taken on the record and reduced to writing. The person being deposed shall sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party shall take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party shall take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party shall serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the administrative law judge, on the hearing docket clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena *duces tecum* is to be served on the person to be examined, the party shall attach a copy of the subpoena *duces tecum* that describes the materials to be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. If a party objects to an interrogatory, the party shall state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party shall not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory shall be counted as a separate interrogatory.

(2) A party shall file a motion for leave to serve additional interrogatories on a party with the administrative law judge before serving additional interrogatories on a party. The administrative law judge shall grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party shall set forth each request for admission separately. A party shall serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and shall state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party shall show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the administrative law judge determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer.

(n) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 13.221 Notice of hearing.

(a) *Notice.* The administrative law judge shall give each party at least 60 days notice of the date, time, and location of the hearing.

(b) *Date, time, and location of the hearing.* The administrative law judge to whom the proceedings have been assigned shall set a reasonable date, time, and location for the hearing. The administrative law judge shall consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge shall give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

§ 13.222 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge shall admit any oral, documentary, or demonstrative evidence introduced by a party but shall

exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 13.223 Standard of proof.

The administrative law judge shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof shall prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 13.224 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 13.225 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 13.226 Public disclosure of evidence.

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the administrative law judge and serving a copy of the motion on each party. The party shall state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge shall grant the motion to withhold information in the record if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to aviation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 13.227 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than the FAA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for the FAA in any proceeding governed by this subpart to which the respondent is a party.

§ 13.228 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing or to require the production of documents or tangible items from the hearing docket clerk. The hearing docket clerk shall deliver the subpoena, signed by the hearing docket clerk or an administrative law judge but otherwise in blank, to the party. The party shall complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena shall serve the subpoena on the witness.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena with the administrative law judge at or before the time specified in the subpoena for compliance. The applicant shall describe, in detail, the basis for the application to quash or modify the supoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the local Federal district court to seek judicial enforcement of the subpoena in accordance with section 1004 of the Federal Aviation Act of 1958, as amended.

§ 13.229 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, shall pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 13.230 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, applications, requests, and rulings shall constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding. Any proceedings regarding the disqualification of an administrative law judge shall be included in the record.

(b) *Examination and copying of record.* Any person may examine the record at the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591. Any person may have a copy of the record after payment of reasonable costs to copy the record.

§ 13.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge shall give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Posthearing briefs.* The administrative law judge may request written posthearing briefs before the administrative law judge issues an initial decision in the proceedings if the administrative law judge finds that submission of written arguments would be reasonable. If a party files a written posthearing brief, the party shall include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge shall give the parties a reasonable opportunity, not

more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 13.232 Initial decision.

(a) *Contents.* The administrative law judge shall issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge shall include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge shall make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge shall issue the initial decision and order orally on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge shall serve a copy of any written initial decision on each party.

(d) *Order assessing civil penalty.* Unless appealed pursuant to § 13.233 of this subpart, the initial decision issued by the administrative law judge shall be considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

§ 13.233 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 13.219, by filing a notice of appeal with the FAA decisionmaker. A party shall file the notice of appeal with the Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Appellate Docket Clerk. A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and shall serve a copy of the notice of appeal on each party.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each filing of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to perfect the appeal, the appellate docket clerk shall serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party shall file the appeal brief with the FAA decisionmaker and shall serve a copy of the appeal brief on each party.

(1) A party shall set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief with the FAA decisionmaker not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief shall serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party shall specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to file the reply brief, the appellate docket clerk shall serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension with the FAA decisionmaker and shall serve a copy of the motion on each party. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an *amicus curiae* brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and shall serve a copy of the petition on each party. The party may not file the additional brief with the petition. The FAA decisionmaker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party shall file the original appeal brief or the original reply brief, and two copies of the brief, with the FAA decisionmaker.

(h) *Oral argument.* The FAA decisionmaker has sole discretion to permit oral argument on the appeal. On the FAA decisionmaker's own initiative or upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal

and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection is based on evidence contained on the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the briefs on appeal and the oral argument, if any, to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 13.235, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is precedent in any other civil penalty action. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

§ 13.234 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party shall file a petition to reconsider or modify with the FAA decisionmaker not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and shall serve a copy of the petition on each party. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) *Form and number of copies.* A party shall file a petition to reconsider or modify, in writing, with the FAA decisionmaker. The party shall file the original petition with the FAA decisionmaker and shall serve a copy of the petition on each party.

(c) *Contents.* A party shall state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party shall describe these allegations and shall describe, and support the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party shall set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party shall explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the FAA decisionmaker. A party shall serve a copy of the reply on each party.

(f) *Effect of filing petition.* Unless otherwise ordered by the FAA decisionmaker, filing of a petition pursuant to this section will not stay or delay the effective date of the FAA decisionmaker's final decision and order on appeal and shall not toll the time allowed for judicial review.

(g) *FAA decisionmaker's decision on petition.* The FAA decisionmaker has sole discretion to grant or deny a petition to reconsider or modify. The FAA decisionmaker will grant or deny a petition to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

§ 13.235 Judicial review of a final decision and order.

A person may seek judicial review of a final decision and order of the Administrator as provided in section 1006 of the Federal Aviation Act of 1958, as amended. A party seeking judicial review of a final decision and order shall file a petition for review not later than 60 days after the final decision and order has been served on the party.

Issued in Washington, DC, on June 27, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-15332 Filed 6-27-90; 3:58 pm]

BILLING CODE 4910-13-M

federal register

Tuesday
July 3, 1990

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 710

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 710

RIN 1029-AB24

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement ("OSM") is proposing to amend its regulations to allow surface coal mine operators who received permits under the Initial Regulatory Program to meet counterpart Permanent Program performance standards in lieu of meeting the Initial Program requirements. This action is appropriate because it would enable Initial Program sites to be reclaimed to the latest technical and environmental standards of the Permanent Program.

DATES: *Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on September 4, 1990.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC on August 24, 1990; in Denver, Colorado on August 24, 1990; and in Knoxville, Tennessee on August 24, 1990. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on August 8, 1990. Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES: *Comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131A, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: If public hearings are scheduled in Washington, DC, Denver, or Knoxville (see **DATES:** *Public Hearings),* such hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2954 (Commercial) or 268–2954 (FTS).

SUPPLEMENTARY INFORMATION: .

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **"DATES"**) or delivered to an address other than those listed above (see **"ADDRESSES"**) may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Sheffield (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5 p.m. Eastern time August 8, 1990. If no one has contacted Mr. Sheffield to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and to ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously spcecified (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 ("the Act" or "SMCRA") was signed into law on August 3, 1977. Section 502 of the Act authorized the establishment of an Initial Regulatory Program under which surface coal mining operations would be regulated pending the establishment of a more comprehensive Permanent Program. The regulations implementing the Initial Program were published in final on Decmeber 13, 1977 (42 FR 62639). Final Permanent Program regulations, which differ from their Initial Program counterparts in some significant respects were promulgated on March 13, 1979 (44 FR 14901), and subsequently revised in part in 1983 and later.

Although the Permanent Program rules have been in effect for some time, the Initial Program rules continue to apply to operators who are acting pursuant to permits received under the Initial Program. This is appropriate because these operators, many of whom have completed mining and much of the required reclamation, have directed their operation and reclamation activities toward meeting the Initial Program requirements. It would be inequitable or infeasible to require these operators to comply with an entirely new set of performance standards.

The Permanent Program rules represent the latest technical and environmental standards for interpretation of the Act and are the result of the experience of more than ten years of implementing the Act, including many revisions mandated by courts. However, in cases where the Initial Program performance standards continue to apply, Regulatory Authorities must require operators to comply with all of the earlier standards, even when compliance with Permanent Program standards would ensure

implementation of SMCRA and in many cases would result in reclamation superior to that which be achieved under the Initial Program standards.

In some cases, as discussed in the examples below, it is difficult, unreasonably expensive, or impossible to complete all reclamation requirements at a site mined under the Initial Program. As a result, these sites are left partially reclaimed, and final bond release and termination of the permit are delayed indefinitely. In addition, the regulatory authority must continue to inspect these inactive sites on a regular basis. If the Permanent Program performance standards could be applied to these sites, they could be reclaimed in a manner consistent with the requirements now routinely applied to new mining operations, bonds could be released, and permits could be terminated. At the same time, Initial Program permittees who plan to comply with the Initial Program performance standards would not be prevented, or in any way restricted, from doing so.

Some examples of cases where Initial Program performance standards differ from newer Permanent Program standards are described below. In these cases, the current requirements of the Permanent Program assure full implementation of the Act.

Backfilling and Grading Requirements (30 CFR 715.14 and 717.14)

These sections of the Initial Program rules require complete highwall elimination on remined areas with pre-existing highwalls even when there is insufficient spoil. In contrast, the Permanent Program rules at 30 CFR 816.106 and 817.106 allow for less than complete highwall elimination under the same conditions where the volume of all reasonably available spoil is demonstrated to be insufficient to completely backfill the reaffected or enlarged highwall. The Permanent Program standards require that remined highwalls be backfilled to the maximum extent technically practical. Therefore, if the regulatory authority allows the standards found in the Permanent Program rules to apply to sites governed by the Initial Program, the regulatory authority would be encouraging the reclamation of some sites not currently reclaimable to the Initial Program standards.

Water Quality Standards and Effluent Limitations (30 CFR 715.17(a) and 717.17(a))

These sections of the Initial Program rules contain specific numerical effluent limitations which were based on Environmental Protection Agency (EPA) rules in effect at the time the final Initial Program rules were issued in 1977. Since then, EPA has made changes to its rules governing effluent limitations, and those changes are incorporated by reference in OSM's current Permanent Program rules at 30 CFR 816.42 and 817.42. Allowing Initial Program permittees to comply with current Permanent Program rules would enable operators to meet current EPA standards.

Sedimentation Pond Requirements (30 CFR 715.17(e)(21) and 717.17(e)(21))

These Initial Program rules include requirements that exceed those found in the Permanent Program rules in that they require that drainage *entering* a sedimentation pond meet the applicable State and Federal water quality requirements for the *receiving* stream before the pond may be removed. The Permanent Program rules at 30 CFR 816.46 (b)(5) and (b)(6) and 30 CFR 817.46 (b)(5) and (b)(6) require that the disturbed area be stabilized and revegetated prior to removal of the pond. This recognizes that, once stabilized and revegetated, a distrubed area is unlikely to continue to contribute unacceptable levels of suspended solids during runoff from precipitation events. Thus, when reclamation of a disturbed area has reached that point, sedimentation ponds to control siltation are no longer needed and may be removed. If a regulatory authority allows Initial Program permittees to meet the Permanent Program standard in this case, it will eliminate a requirement that is environmentally unnecessary.

Standards for Measuring Success of Revegetation (30 CFR 715.20(f)(1))

This section of the Initial Program rules requires that revegetation success be measured by comparing revegetated areas to reference areas, units of land maintained and managed for the purpose of measuring ground cover, productivity and species diversity naturally produced in a given area. The Permanent Program rules at 30 CFR 816.116 and 817.116 provide for determining revegetation success either by comparison to reference areas or through the application of established procedures and techniques. This latter method allows flexibility to consider the diverse climatic and soil conditions found in different mining areas rather than limiting the evaluation of success to a comparison with reference areas.

Alternative Postmining Land Use Standards (30 CFR 715.13(d))

The Permanent Program performance standards governing postmining land use found at 30 CFR 816.133 and 817.133 are more flexible than the Initial Program rules in providing for alternative land uses. Such alternatives, however, are allowed only when the use is higher or better than the pre-mining land use as determined under the criteria in 30 CFR 816.133(c) and 817.133(c). Allowing such alternatives for Initial Programs sites would allow greater flexibility in developing and reclaiming disturbed areas for approved postmining land uses, while ensuring that the interests of all affected parties are protected.

Relationship of Proposed Rule to a Petition for Rulemaking

Coincidentally, on June 20, 1989, while considering this proposed rulemaking, OSM received a petition from Mr. J. Nathan Noland, President, Indiana Coal Council, suggesting that paragraph (d) of 30 CFR 715.13, which contains the criteria for postmining land use applicable to Initial Program sites, be replaced with the language in paragraph (c) of 30 CFR 816.133(d), which contains the criteria for postmining land use applicable to Permanent Program sites.

The reasons cited by the petitioner for the suggested rule changes were similar to those cited as the basis for this proposed rule, although the petition only dealt with postmining land use provisions. The petition cited (1) the confusion of having two different sets of postmining land use provisions in the regulations; (2) the fact that OSM had acknowledged the inadequacy of the Initial Program rules for postmining land use when the current Permanent Program rules were developed in 1982/83; and (3) the legal basis for such a change, supported by court decisions.

OSM announced receipt of the petition in the Federal Register with a 30-day comment period on July 6, 1989. By the close of the comment period, OSM had received five comments, all supporting the petition, and citing essentially the same reasons as the petitioner.

The petitioner provided ample justification for the suggested change in the rules. However, making the change as recommended in the petition would address the problem of continued applicability of Initial Program performance standards only for postmining land use. It would not address the numerous other problem areas outlined in this proposed rule.

On the other hand, moving forward with this proposed rule would achieve the goal of the petition—to allow application of the Permanent Program performance standards for alternative postmining land use to operations

permitted under the Initial Program—but would go further by allowing application of Permanent Program performance standards to other areas of the Initial Program.

By letter of December 5, 1989, to Mr. Noland, the Director of OSM denied the petition for rulemaking but informed the petitioner that OSM would proceed with this proposed rulemaking for the reasons discussed above.

III. Discussion of Proposed Rule

OSM proposes to provide regulatory authorities greater flexibility in implementing Initial Program regulations by allowing Initial Program permittees the option of meeting counterpart Permanent Program performance standards in lieu of meeting the Initial Program requirements. At 30 CFR 710.11, which establishes the applicability of the Initial Program, a new paragraph (e) would be added as follows:

(e) *Satisfying Permanent Program Performance Standards in lieu of Initial Program Performance Standards.* Where there is a counterpart Permanent Program performance standard in subchapter K of this chapter that corresponds to an Initial Program performance standard in subchapter B of this chapter, the regulatory authority may determine that meeting either performance standard will satisfy the requirements of subchapter B of this chapter.

This proposed rulemaking is not an attempt to allow coal operators permitted under the Initial Program to avoid their reclamation responsibilities. Through this proposed rulemaking, OSM seeks to find a way for Initial Program permittees to satisfy the reclamation requirements of SMCRA without having to meet requirements that OSM decided during development of the Permanent Program performance standards were no longer appropriate. OSM seeks suggestions as to how this can be reasonably and equitably achieved.

Changes are also being proposed in the information collection requirements statement at 30 CFR 710.10. These changes, which are not substantive, are included in this proposed rule merely to reflect the current status of Office of Management and Budget approval of information collection requirements for part 710 and to provide information to those who may wish to comment on the information collection requirements contained in part 710.

Existing 30 CFR 710.10 reads:

> Since the information collection requirements contained in 30 CFR 710.4(b); 710.11(d)(2)(ii); 710.12(e) have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*) and do not require clearance by OMB.

Proposed § 710.10 would read:

> The collections of information contained in §§ 710.4, 710.11, and 710.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0095. The information will be used in administering the Initial Regulatory Program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.*
>
> Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029–0095), OMB, Washington, DC 20503.

Another Option Considered by OSM

In addition to seeking comments on this proposed rule, OSM invites comments on other ways to deal with the Initial Program performance standards in 30 CFR parts 715, 716, and 717, including the possibility of eliminating the Initial Program performance standards entirely and applying the Permanent Program performance standards in subchapter K of this chapter to operations permitted under the Initial Program.

Effect in Federal Program States

The proposed rule would apply thorugh cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect on State Programs

Following promulgation of the final rule, permanent State regulatory programs approved under section 503 of SMCRA may adopt the rule to allow operators to meet the Permanent Program performance standards in lieu of meeting the Initial Program standards.

IV. Procedural Matters

Paperwork Reduction Act

OSM is proposing to amend the information collection statement contained in existing § 710.10 to reflect the current status of the Office of Management and Budget (OMB) approval of the information collection requirements contained in part 710 and to provide information to those who may wish to comment on those requirements. The information collection requirements contained in part 710 are located in §§ 710.4(b), 710.11(d) and 710.12(e). They have been previously approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0095. This proposed rule does not revise §§ 710.4(b), 710.11(d) and 710.12(e). There are no information collection requirements in existing § 710.10, the proposed revision to § 710.10 or proposed § 710.11(e).

Executive Order 12291

In accordance with the criteria of Executive Order 12291, the Department of the Interior has determined that this rule is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONSI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The author of this regulation is Mr. Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC, 20240; Telephone (202)

208–2954 (Commercial or 268–2954 (FTS).

List of Subjects in 30 CFR Part 710

Law enforcement, Public health, Reporting and recordkeeping requirements, Safety, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

Accordingly, it is proposed to amend 30 CFR part 710 as set forth below:

Dated: May 3, 1990.

James M. Hughes,

Deputy Assistant Secretary, Land and Minerals Management.

PART 710—INITIAL REGULATORY PROGRAM

1. The authority citation for part 710 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, and Public Law 100–34.

2. Section 710.10 is revised to read as follows:

§ 710.10 Information collection.

The collections of information contained in §§ 710.4, 710.11, and 710.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0095. The information will be used in administering the Initial Regulatory Program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029–0095), OMB, Washington, DC 20503.

3. Section 710.11 is amended by adding a new paragraph (e) to read as follows:

§ 710.11 Applicability.

* * * * *

(e) *Satisfying Permanent Program Performance Standards in lieu of Initial Program Performance Standards.* Where there is a counterpart Permanent Program performance standard in subchapter K of this chapter that corresponds to an Initial Program performance standard in subchapter B of this chapter, the regulatory authority may determine that meeting either performance standard will satisfy the requirements of subchapter B of this chapter.

[FR Doc. 90–15341 Filed 7–2–90; 8:45 am]

BILLING CODE 4310–05–M

federal register

Tuesday
July 3, 1990

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priority for Fiscal Years 1990–1991; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Final Funding Priority for Fiscal Years 1990–1991

AGENCY: Department of Education.

ACTION: Notice of final funding priority for Fiscal Years 1990–1991.

SUMMARY: The Secretary of Education announces a final funding priority for a Rehabilitation Research and Training Center (RRTC) on Improved Rehabilitation for Low-Functioning Deaf Individuals to be funded by the National Institute on Disability and Rehabilitation Research (NIDDR) for fiscal years 1990–1991.

FOR FURTHER INFORMATION CONTACT: Dr. L. Deno Reed, National Institute on Disability and Rehabilitation Research. Telephone: 202–732–1193. Deaf and hearing impaired individuals may call 202–732–5236 for TDD services.

EFFECTIVE DATE: This priority takes effect either August 17, 1990, or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

SUPPLEMENTARY INFORMATION: The Conference Report accompanying the Appropriations Act for the Departments of Labor, Health and Human Services, and Education for 1990 provided that "it is the intention of the conferees that NIDRR establish a new research and training center dealing with the needs of low-functioning deaf individuals." On March 23, 1990, NIDRR published in the Federal Register a proposed priority in response to that congressional intent, (55 FR 10984.) The publication of this final funding priority does not bind the Federal Government to fund projects in this area, except as otherwise directed by statute. Funding of particular projects depends on the availability of funds and on the quality of applications that are received.

Analysis of Comments and Changes

NIDRR received several comments concerning the proposed priority. Most of the comments expressed support for the proposed priority as written, but two commenters requested modifications to the priority. An analysis of these comments and the Secretary's responses to them follow.

Comment: One commenter objected to the use of the phrase, "low-functioning deaf", on the grounds that it tended to demean deaf individuals in the Center's target population.

Discussion: The Secretary is extremely sensitive to the concerns of the commenter. The language used in the proposed priority is that used by Congress in its expression of intent that NIDRR establish the Center, and was incorporated in the notice in order to be responsive to that congressional intent. Among the responsibilities of the proposed Center will be the development of new methods to identify, assess, and characterize that population of deaf individuals who have multiple disabilities or inadequate educational preparation, and better descriptive terminology should emerge from this process. It is the intention of NIDRR to ensure that any Center funded in response to this priority uses more accurate terminology in its title and its publications.

Changes: None.

Comment: One commenter recommended that the priority requirements be expanded to include a requirement for research on instruments to detect the presence of specific learning disabilities and language disorders, including tests formatted for individuals whose communication style is through American Sign Language (ASL). The commenter further recommended that the Center should be required to include deaf individuals for whom ASL is the preferred means of communication in the planning and operation of its activities.

Discussion: The Secretary agrees that the commenter has suggested an important area for study. However, studies related to diagnosis of specific learning disabilities and language disorders could easily be included within the priority statement as written, and, in fact, any applicant responding to this priority would be expected to take into account all significant segments of the target population in its proposed structure and activities. The priority requires that the Center provide all materials, which would include tests, in media that are accessible to all major segments of the target population, including those who use American sign language. Therefore, the Secretary believes that it is not advisable to single out specific secondary disabilities or communication styles, but rather prefers to allow the applicant to propose research on the appropriate populations.

The Secretary requires, through the statement of the priority, that any Center to be funded under this priority include individuals who are deaf in all phases of Center planning and operations. The Secretary expects that any applicant responding to this priority will include representation of individuals using each of the prevailing modes of communication, which would include American sign language. Therefore, the Secretary prefers not to single out specific segments of the deaf population that must be involved, but to advise applicants to develop their own approaches to ensuring this inclusion.

Changes: None.

Background

Authority for the Rehabilitation Research and Training Center (RRTC) program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education or to public or private organizations that are affiliated with institutions of higher education. RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. RRTCs provide training to undergraduate and graduate students and to practitioners engaged in the provision of rehabilitation services. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience that will contribute to the number of qualified researchers working in the field of rehabilitation research. The Centers are encouraged to develop practical applications for all of their research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing graduate and undergraduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination must be accessible to individuals with a range of disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Improved Rehabilitation for Low-Functioning Deaf Individuals

The National Center for Health Statistics (NCHS) estimated that there were 21 million Americans with hearing impairments in 1985, and that approximately 700,000 reported that they were limited in their ability to perform their regular activities because of their hearing impairment. (NCHS, *Data From the National Health Survey*, Series 10, No. 160, 1987.) However, within the general population of deaf and hearing-impaired Americans, there

is a subpopulation of individuals with deafness who are profoundly and severely limited in their abilities to learn, work, communicate, or live independently. This group, referred to here as low-functioning deaf individuals, consists primarily of those individuals who have been deaf since birth or childhood; a substantial number of these individuals have other disabilities—such as blindness, autism, cerebral palsy, epilepsy, or mental retardation—that also exacerbate the disabling effect of the hearing impairment.

According to the Commission on the Education of the Deaf (COED), approximately 60 percent of the deaf students who leave school each year, whether as graduates or dropouts, are unable to benefit from higher education and either enter low-skilled jobs or remain unemployed. The COED report also notes that an estimated 100,000 deaf persons are either unemployed or seriously underemployed due to additional problems, such as deficiencies in language performance and related psychological, vocational, and social underdevelopment. According to this report, this population of low-functioning deaf adults increases annually as about 2,000 deaf persons leave school without entering into further education, training, or employment. (COED, *Toward Equality: Education of the Deaf*, 1988.)

Variously labeled "low-achieving deaf", "non-feasible deaf", "multiple-handicapped hearing-impaired", "hearing-impaired developmentally disabled", and "low-functioning deaf", this population is difficult to identify and assess, and remains underserved. Members of this group tend to have limited formal education; marginal manual and oral communicaton skills; extremely low levels of reading, writing, and language skills; and very limited employment experience. Without some type of intensive specialized rehabilitative intervention, this group is likely to experience an extremely high rate of unemployment as technological advances further reduce the number and types of jobs that they have traditionally filled.

Further research is needed to improve our understanding of the needs of the low-functioning deaf population; to refine methods of identifying, evaluating, and diagnosing these individuals; to identify and develop effective rehabilitation intervention approaches, programs, and service delivery systems; to build the capacity to serve this population among rehabilitation counselors, educators, and health service workers; to develop relevant data, learning materials and informational media; and to improve the services available for this population, particularly in the areas of diagnosis, independent community living, vocational preparation, communication skills, and psychosocial adjustment.

Any Center to be funded in response to this priority must involve individuals with deafness, including individuals from a diversity of economic and ethnic backgrounds, in all phases of the planning, conduct, and review of Center activities. Any such Center must provide all assessment instruments, program descriptions, training materials, databases, and technical assistance in formats that are accessible to deaf individuals.

An absolute priority is announced for a Center in this area that will:

- Investigate the causes and rehabilitation-related functional consequences of disabling physical, social, cultural, emotional, behavioral, communicative, and cognitive conditions among low-functioning deaf individuals, including individuals with one or more severe secondary disabilities;
- Identify those services offered to the general population that may be appropriate for low-functioning deaf individuals, identify the major barriers to the use of those services, and develop new and innovative service approaches and modifications to service delivery systems to eliminate those barriers and to enhance the rehabilitation of this population;
- Identify and demonstate the effective use of existing rehabilitation assessment techniques and rehabilitation methods with low-functioning deaf individuals, including those with severe secondary disabilities, and develop and test new methods and techniques;
- Develop research-based models to support families, professionals, and service providers in their efforts to enhance the development, adjustment, rehabilitation, and independence of low-functioning deaf individuals, including those with severe secondary disabilities;
- Develop and evaluate models of technical assistance to State rehabilitation and State developmental disabilities agencies to improve services and service delivery systems for low-functioning deaf individuals, including those with severe secondary disabilities;
- Develop and maintain a national database, and serve as a central repository, of information on the rehabilitation of low-functioning deaf individuals, including those with severe secondary disabilities;
- Maintain an interactive relationship with major comprehensive rehabilitation facilities serving low-functioning deaf persons, including those with severe secondary disabilities, on a national or regional basis;
- Develop effective instructional and media materials, with open captions, to enhance the dissemination of new knowledge in this area to appropriate audiences, including physicians, allied health practitioners, teachers, counselors, consumers, and parents; and
- Conduct one or more conferences on the state-of-the-art in significant aspect of rehabilitation of low-functioning deaf individuals, including those with severe secondary disabilities.

Authority: 29 U.S.C. 762(b).

(Catalog of Federal Domestic Assistance Number 84.133B, National Institute on Disability and Rehabilitation Research)

Dated: June 14, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–15431 Filed 7–2–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
July 3, 1990

Part V

Department of Housing and Urban Development

Office of Public and Indian Housing

24 CFR Parts 50 and 961

Public Housing Drug Elimination Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public and Indian Housing

24 CFR Parts 50 and 961

[Docket No. R-90-1442; FR-2592-F-02]

RIN 2577-AA76

Public Housing Drug Elimination Program

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule codifies at 24 CFR Part 961 the requirements for the Public Housing Drug Elimination Program, as authorized by chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901–11908). The program authorizes HUD to make grants to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) for use in eliminating drug-related crime in public housing projects. To receive funding under this program, PHAs and IHAs are required to develop a plan for addressing drug-related crime, and to indicate how assisted activities will further the plan. Grant funds may be used for the following activities designed to eliminate drug-related crime: (1) Employment of security personnel and investigators; (2) reimbursement of local law enforcement agencies for the cost of providing additional (*e.g.*, over and above the level of services the locality is already obligated to provide under its Cooperation Agreement with the PHA) security and protective services; (3) physical improvements designed to enhance security in public housing projects; (4) support of public housing tenant patrols acting in cooperation with local law enforcement agencies; (5) innovative programs to reduce drug use in and around public housing projects; and (6) funding of Resident Management Corporations (RMCs) and incorporated Resident Councils (RCs) for the development of security and drug abuse prevention programs involving site residents.

EFFECTIVE DATE: The requirements contained in this final rule are effective as of August 2, 1990.

FOR FURTHER INFORMATION CONTACT: Ed Johnson or Dave Tyus, Ofice for Drug Free Neighborhoods, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10241, Washington, DC 20410, telephone (202) 708–1197 or 708–3502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB control number 2577–0124. Public reporting burden for the collection of information requirements contained in this final rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Paperwork Reduction Project (2577–0124), Office of Management and Budget, Washington, DC 20503.

I. Background

Congress authorized the Public Housing Drug Elimination Program under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.) ("the Act"). The Act authorizes HUD to make grants to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) for use in eliminating drug-related crime in targeted public housing projects.

The Department published a proposed rule to implement the program on June 21, 1989 (54 FR 26154). When funding for the program later became available under the Dire Emergency Supplemental Appropriations Act (Pub. L. 101–45, approved June 30, 1989), HUD published a notice of fund availability (NOFA) (54 FR 38496) to allocate the $8.2 million appropriation. Because the NOFA contained some requirements that differed from those contained in the earlier proposed rule, HUD solicited public comment on both the proposed rule and NOFA requirements. These comments have been used by HUD in developing the requirements in this final rule.

II. Public Comments

The Department received 25 public comments on the June 21, 1989 proposed rule and 3 comments on the September 18, 1989 NOFA. The commenters included 17 housing authorities, three private citizens, a police department, a community development commission, a housing finance agency, a commercial security firm, a national housing association, the Vanderbilt University School of Nursing, the U.S. Department of Justice (Office of Juvenile Justice and Delinquency Prevention), and a United States Senator.

The vast majority of the commenters emphatically supported HUD's proposed implementation of the Public Housing Drug Elimination program. In particular, several housing authorities stated that funding under this program would enable them to respond to drug-related crime problems in their projects, which they claimed they would otherwise be unable to address because of inadequate resources.

Other comments on the proposed rule and NOFA are discussed below. For ease of reference, each topic heading includes citations to the relevant provisions in the proposed rule and NOFA.

a. Definition of "Controlled Substance" (§ 961.3; Section 1.3)

A number of commenters, including the Alaska Association of Housing Authorities and the Navajo Housing Authority (NHA), asserted that alcohol is their primary drug concern and asked HUD to reconsider the exclusion of alcohol under this drug program.

Although the Department fully appreciates the severity of the alcohol abuse problems in these jurisdictions, it does not have the discretion to authorize the use of program funds for this purpose. Under section 5123 of the Act, the Secretary is authorized to make grants available to public housing agencies " * * * for use in eliminating drug-related crime in public housing projects." The term "drug-related crime" is defined to mean the manufacture, sale, distribution, or use, of a controlled substance. This latter term is defined by statute to exclude distilled spirits, wine and malt beverages. As a result, HUD is unable to expand the scope of this program to include alcoholic beverages.

Nevertheless, it should be pointed out that Congress has responded to alcohol and drug concerns affecting the Indian population in its enactment of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 *et seq.*). Under that Act, the Department of Health and Human Services (HHS) (acting through the Indian Health Service) is authorized to establish a comprehensive alcohol and substance abuse prevention and treatment program targeted specifically to members of Indian tribes. Under a separate provision of that Act, HHS is also authorized to make grants to the Navajo Nation to establish a

demonstration program to rehabilitate Navajo Indians suffering from alcoholism or alcohol abuse. Consequently, even though alcohol is not covered under this program there are alternative Federal resources available to the Indian community that can be used to combat alcohol use in Indian jurisdictions.

The NHA also asked HUD to specifically exclude from the definition of "controlled substance" the drug "Peyote," which the housing authority claimed is used by 50% to 60% of all Navajos as part of the Native American Church's ceremonial activities.

HUD does not have the discretion to determine whether Peyote is a controlled substance, since the list of controlled substances is established by statute under schedules I, II, III, IV and V of section 102 of the Controlled Substances Act (21 U.S.C. 802). Moreover, under schedule I(c) of that listing, "Peyote" is specifically included as a controlled substance and HUD does not have the authority to modify this determination for purposes of this program.

b. Definition of "Local Law Enforcement Agencies" (§ 961.3; Section 1.3)

The NHA commented that the rule's definition of "local law enforcement agencies" is too restrictive because it focuses exclusively on the police. It asserted that any effort to deal with drug-related crime in Indian jurisdictions must include tribal prosecutors, and asked HUD to revise its definition of "local law enforcement agencies" to include this group.

HUD wants to clarify that "local law enforcement agencies" refers to those governmental entities that have law enforcement responsibilities for the community at large, but does not include entities that undertake adjudicatory or prosecutorial functions. To the extent that tribal prosecutors in Indian jurisdictions assume law enforcement functions that are analogous to those of tribal police, they are covered under the definition of "local law enforcement agencies." However, tribal prosecutors that are part of the tribal adjudicatory or prosecutorial systems are outside the scope of this definition, and are excluded. HUD has revised the final rule to reflect these distinctions.

c. Definition of "Public Housing Projects" (§ 961.3; Section 1.3)

The Massachusetts Housing Finance Agency (MHFA) asked HUD to expand the scope of this program by permitting Section 8 developments to qualify for assistance, rather than restricting program eligibility to public housing projects. The MHFA insisted that "* * * Section 8 developments experience the same devastation from illegal drugs as other lower-income developments," and should qualify for funding under this program. While the Department is keenly aware of the fact that Section 8 developments are as affected by incidents of drug-related crime as public housing projects, it does not have the discretion to provide funding for Section 8 projects. Under section 5123 of the Act, the Secretary is authorized to make grants available to PHAs "* * * for use in eliminating drug-related crime in public housing projects." The term "public housing" is defined at section 3(b)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) as "lower income housing, and all necessary appurtenances thereto, assisted under this Act other than under section 8 * * *." As a result, section 8 projects are statutorily barred from receiving assistance under this grant program, and HUD is unable to expand the scope of the program to include them.

d. Eligible Activities (§ 961.10; Section 2.1)

1. General

A commenter suggested that HUD could maximize the use of grant funds under this program by allowing PHAs to provide funding directly to local agencies to supervise a housing authority's drug-related crime problems. This commenter noted that such supervising agencies could include the local police department and area alcohol and drug abuse agencies. Another commenter expressed a similar concern when it asked whether PHAs would be given sufficient latitude under the program to coordinate their anti-drug related crime efforts with other organizations.

The Department wants to emphasize that not only does it support, but it actively encourages, housing authorities to coordinate their efforts under this program with State, tribal and local governments, and with private sector organizations. Only through such a coordinated effort can housing authorities elicit the cooperation and support of the public and private sectors in the effort to eliminate drug-related crime in their projects.

Moreover, under section 5125(b)(4) of the Act, HUD is statutorily required to consider in its evaluation of grant applications "the extent to which the local government and local community support the anti-crime activities of the public housing agency." By including this factor as a selection criterion, Congress clearly expressed its view that the most successful PHA programs will be those that involve a strong public-private sector partnership.

The Department also wants to emphasize that even though PHAs and IHAs are the only eligible grantees under this program, there is no prohibition against a PHA's subcontracting various aspects of the program to the local police department or to other similar agencies. As a result, the final rule retains the provision at § 961.30(c) authorizing subgrants to RMCs, RCs or other qualified third parties under a written agreement between the PHA and the subgrantee.

However, this provision has been amended in this final rule to permit only Resident Councils that are incorporated to enter into a subgrant agreement with a PHA or IHA under this part. The Department believes that this limitation is necessary to insure that the Resident Council has a sufficiently formal organizational structure to permit the effective use and monitoring of grant funds under this program.

HUD is also prohibiting under this section a PHA or IHA from entering into a subgrant agreement with an identity of interest Housing Development Corporation (HDC). The Department believes that these entities should not receive subgrants because it creates a conflict of interest and unnecessarily inflates administrative expenses.

HUD has also amended § 961.10, and added a new provision at § 961.30(b), to require each grantee to obtain adequate insurance coverage to protect itself against any potential liability arising out of the activities conducted under this part. Grantees that intend to use program funds for the voluntary tenant patrols under § 961.10(e) are also required to obtain insurance coverage to protect the members of the tenant patrol against any potential liability for the activities of the patrol. The Department is providing in this final rule that the cost of such insurance is an eligible incidental program expense. Subgrantees remain obligated to pay for the cost of their own insurance coverage.

In obtaining insurance coverage under this program, the PHA and the subgrantee should consider the nature of the activities to be carried out under this part; the potential liability to the subgrantee and the PHA as a result of these activities; and any limitations on liability under State, tribal or local law. HUD is specifically requiring under § 961.30(c) that each grantee discuss in its subgrant agreement: (1) The nature of the activities to be undertaken by the

subgrantee, and the scope of the subgrantee's authority; and (2) the amount of insurance coverage to be obtained by the PHA and the subgrantee to protect their respective interests.

One commenter wrote that since many of the eligible activities under the rule are already available to PHAs through the Comprehensive Improvement Assistance Program (CIAP), the establishment of a separate program under this rule will only confuse existing PHA efforts. The commenter asked that funding under this rule be used instead to establish a CIAP set-aside for drug elimination activities.

The Department has not adopted this suggestion since the Public Housing Drug Elimination program is a statutory initiative that HUD is required to implement, and HUD does not have the discretion to unilaterally dismantle the program in order to fund an alternative drug elimination program. HUD also notes that even though there will undoubtedly be some overlap in program activities, the drug elimination activities under CIAP and the Public Housing Drug Elimination program each have a different focus. The CIAP program is intended primarily to fund physical improvements to eliminate drug-related crime, while the Public Housing Drug Elimination program responds mostly to "soft costs" associated with the drug elimination effort. Consequently, the activities conducted under these programs should complement, rather than duplicate, one another.

2. Security Personnel (§ 961.10(a); Section 2.1(a))

Two commenters asked HUD to clarify the function, role and obligations of commercial security firms that contract with a PHA to provide services under § 961.10(a). These commenters asked HUD specifically to address such issues as liability, qualifications of the security firms and their employees, insurance or bonding requirements, limitations on the use of force or weapons, background investigations of the contractor and its employees, and the relationship between security firms and the local police.

Similar concerns were raised by the NHA which claimed that, unlike most States, many Indian tribes have not yet developed standards for the licensure of, and limited immunity from suit for, security guards and investigators. The NHA asked HUD to give special consideration to the potential liability of IHAs arising out of a security officer's or tenant patrol member's falsely arresting an individual, using force in self-defense, or litigating malicious prosecution claims.

Finally, a commercial security firm commented that since security personnel generally have no greater "police" authority than private citizens, HUD must grant official status and arrest authority to security personnel and investigators employed under this rule.

In response to these comments, HUD wants to emphasize that the final rule is not intended to establish minimum standards for the licensure, qualifications, training, or insurance coverage relating to the employment of security personnel or investigators, or for the establishment of voluntary tenant patrols. Moreover, the Department does not have the legal authority to confer any jurisdiction or official status, including arrest authority, upon security personnel or investigators employed by a PHA under this program.

Instead, individual State, local and tribal requirements governing these issues will apply in each instance. In the absence of such requirements, it is within the purview of State, local or tribal law-making bodies to promulgate standards or requirements concerning the proper scope of authority of security personnel, based upon applicable local law and the advice and cooperation of local law enforcement agencies. Such requirements will largely determine the potential liability of PHAs and IHAs, security personnel, and the voluntary tenant patrol for any unauthorized or unlawful activities undertaken in the course of carrying out their duties under this program.

Moreover, whether or not there are any applicable State, local or tribal requirements, PHAs and IHAs are advised to independently assess their potential liability as a result of the employment or contracting of security officers and investigators, or the establishment of voluntary tenant patrols under this program. PHAs and IHAs should also evaluate the qualifications and training of the individuals or firms undertaking these functions, and are required under § 961.30(b) to obtain insurance coverage to protect their interest.

The Virgin Islands Housing Authority asked HUD to provide in the final rule for an employment preference for qualified local housing residents who want to be employed as security officers, investigators or as personnel carrying out the program's physical improvements or the on-site educational and vocational activities. HUD supports this suggestion and has included language at § 961.30(d) of the rule that a PHA or IHA must give preference under this program to the employment of public housing residents who have comparable qualifications and training as non-public housing resident applicants. PHAs and IHAs also have discretion (under certain circumstances, as specified in the rule) to offset the salary of a public housing resident employed under this program against the payment of his or her monthly rent.

3. Investigators (§ 961.10(d); Section 2.1(d))

Commenters expressed differing views concerning the employment of investigators under this program. Two commenters expressed strong support for this category of eligible activities, while another commenter insisted that the employment of private investigators under the rule was "totally inappropriate" since it could complicate an ongoing police investigation. The commenter who opposed the employment of investigators added that only local, state or federal law enforcement authorities should assume investigatory functions, and that the rule should limit PHA involvement to referring incidents to the appropriate governmental agency.

Initially, HUD notes that the employment of investigators under this program is statutorily prescribed and the Department does not have the discretion to abolish this category of eligible activities. Yet even aside from this statutory mandate, HUD believes that the employment of investigators will complement, rather than impede, the efforts of local police. Nevertheless, it must be emphasized that PHAs have the discretion under this program to determine the appropriate strategy for utilizing investigators.

A housing authority urged HUD to permit investigators employed under the program "* * * to pursue unauthorized unit occupants." It claimed that unauthorized occupants are frequently involved in drug activities and PHAs must be able to remove them from units as expeditiously as possible. The Department is uncertain as to what this commenter is proposing. If the commenter is suggesting that investigators should be able to pursue unauthorized occupants who are involved in drug-related criminal activity, the Department wants to clarify that the pursuit of individuals involved in drug-related crime is not a proper function of investigators employed under this rule. Such individuals are expected to investigate drug-related crime in a PHA's projects, and to provide evidence relating to these crimes in administrative or judicial

proceedings. They are not to assume the functions of security personnel or the local policy by pursuing individuals involved in drug-related crime.

If, on the other hand, the housing authority is suggesting that investigators should be allowed to pursue leads concerning both authorized and unauthorized occupants of public housing units, the response is that investigators are so authorized. Under § 961.10(d) of this rule, investigators are authorized to investigate drug-related crime "on or about the real property comprising any public housing project and to provide evidence relating to any such crime in any administrative or judicial proceedings." Clearly, neither the rule nor the Act distinguishes between drug-related criminal activity committed by an authorized occupant or by an unauthorized occupant of a public housing unit. Rather, the statutory standard focuses on the area in which the criminal acts are committed, *i.e.* "* * * on or about the real property comprising any public housing project." Moreover, it should be noted that PHAs already have the authority to evict unauthorized public housing occupants, whether or not these individuals are also engaging in drug-related criminal activity.

4. Voluntary Tenant Patrols (§ 961.10(e); Section 2.1(e))

The NHA commented that although it would be interested in establishing a tenant patrol under this program, it was concerned about doing so because the Navajo courts have left open the question of whether the Navajo law of citizens' arrest is the same as general American law. As a result, the Authority was unclear as to the nature of these patrols and the scope of their authority within an Indian jurisdiction, and asked HUD for guidance.

As discussed earlier under section (e)(2) of this preamble (under "security personnel"), HUD has deliberately chosen not to establish a uniform scope of authority for the security personnel, investigators, or members of the voluntary tenant patrol under this rule. This is because the scope of authority for these entities will vary depending upon the jurisdiction in which they are located, and relevant State, local or tribal law requirements. HUD's approach is consistent with the requirement under section 5124(5) of the Act which provides that members of the tenant patrol "* * * act in cooperation with local law enforcement officials."

Nevertheless, the Department has included additional guidance in this final rule concerning the voluntary tenant patrols established under § 961.10(e). The rule now provides at § 961.10(e)(2) that the cooperation agreement between the local law enforcement agency and the voluntary tenant patrol must be in writing, and must describe: (i) the nature of the activities to be undertaken by the tenant patrol and the scope of the patrol's authority; and (ii) the types of activities that a tenant patrol is expressly prohibited from undertaking, including the carrying or use of firearms in the course of its patrol.

The Department has also amended § 961.10(e) of this final rule to provide that the purpose of the tenant patrols is to undertake surveillance for drug-related criminal activity in the targeted public housing projects, and to report such activities to the cooperating law enforcement agency. Tenant patrols are *not* to carry out law enforcement activities, and the rule expressly prohibits members of the tenant patrol from carrying or using firearms in the course of their duties under this program.

Members of the tenant patrol must be insured under the grantee's liability insurance as a condition of participation under this program, and the cost of such insurance will be considered an eligible program expense. HUD has decided to treat these insurance costs as eligible program expenses because: (1) Such costs are incidental to the operation of the tenant patrols; and (2) the tenant patrol members would be unable to secure their own insurance coverage in the absence of HUD's agreement to pay for these costs. Without the benefit of insurance coverage, the Department would essentially be foreclosing the establishment of voluntary tenant patrols under this program.

Patrol members are also advised in the rule that they may be subject to individual or collective liability for any tortious acts committed outside the scope of their authority, and that such actions are not covered under a PHA's or IHA's liability insurance.

A commenter asked whether a PHA could be reimbursed under the voluntary tenant patrols category for such items as police cars, handcuffs, mace and firearms. Under 5124(5) of the Act, a PHA is authorized to use grant funds for public housing tenant patrols for "the provision of training, communications equipment, *and other related equipment* * * *" (emphasis added). HUD construes the term, "* * * other related equipment" to mean equipment that is reasonably related to the operation of the tenant patrol; that the cooperating local law enforcement agency determines to be appropriate and necessary for the functioning of the patrol; and that is otherwise permissible under State, local or tribal law.

Using this standard, HUD is compelled to reject the use of grant funds for the purchase of police cars, since this would represent an expense that is neither reasonably related to, nor necessary for the operation of, the tenant patrols established under this section. Rather, the purchase of a police car would appear primarily to be a capital expenditure benefitting the cooperating law enforcement agency, and hence would be an ineligible expense.

The Department also would not authorize the use of program funds for the purchase of firearms for the tenant patrols, since § 961.10(e) of the rule expressly prohibits members of the tenant patrol from carrying or using firearms in the course of their duties on the patrol.

A commenter questioned whether a resident who participates on a voluntary patrol can receive compensation for his or her services, either in the form of a rent credit or as payment of back rent. HUD will not authorize the use of grant funds to compensate members of the tenant patrol, either in the form of a salary, rent credit, or as payment of back rent. This is because section 5124(5) of the Act states that a PHA can use a grant under this category for certain activities to be undertaken by "* * * voluntary public housing tenant patrols * * *" HUD interprets "voluntary" to mean that members of the tenant patrols are to be uncompensated, in contrast to the security personnel and investigators employed by a PHA under sections 5124 (1) and (4) of the Act who are eligible to receive compensation.

5. Additional Security and Protective Services (§ 961.10(b); section 2.1(b))

A commenter objected to the provision in the proposed rule that would authorize the reimbursement of local police for the cost of providing additional security and protective services to public housing projects. This commenter argued that local governments must be able to decide for themselves how best to allocate resources. However, the commenter suggested that if HUD insisted upon implementing this provision, it should develop guidelines for determining equitable reimbursement amounts, such as whether or not to include direct and indirect charges, and "* * * considering as reimbursement an offset to the PHA's payment in lieu of taxes (pilot)."

HUD wants to emphasize that the purpose of this reimbursement provision

is not to dictate to local governments how best to allocate their resources. Rather, the intent is to provide additional resources to local governments so that unmet needs related to the elimination of drug-related crime in the targeted projects can be addressed. Moreover, this category (as with all the other eligible categories under the rule) is statutorily prescribed and HUD does not have the discretion to unilaterally abolish this program activity.

With regard to the commenter's second concern regarding equitable reimbursement standards, HUD notes that the rule already provides standards for reimbursement to local governments for the cost of providing additional security and protective services. Specifically, § 961.10(b)(1) of the final rule provides that the services to be reimbursed must be services that were either not being provided by the local law enforcement agency to the targeted projects, or they must represent a "quantifiable increase" in the level of ongoing services being provided by the law enforcement agency.

HUD is modifying in this final rule the "quantifiable increase" standard that was previously used to fund additional security and protective services. Under both the proposed rule and NOFA, HUD specified that services to be funded had to represent a "quantifiable increase" in the level of an ongoing service above that which the law enforcement agency provided for a PHA's projects immediately preceding the publication of a NOFA allocating assistance under this program. However, to prevent the substitution of Federal funds under this program for existing local funds, the Department has modified this standard to provide that such funding is permissible only if it results in a quantifiable increase in the level of an ongoing service above that which the law enforcement agency provided for a PHA's projects in the six months immediately preceding the publication of a NOFA allocating assistance under this program.

HUD also notes that the 1989 NOFA allocating funds for this program provided that incidental costs related to carrying out any of the activities under this program are eligible costs, provided the PHA or IHA has in place a cost allocation plan. The Department has retained this provision with one modification: § 961.10 now expressly includes as an eligible program expense the cost of insurance related to protecting the grantee and members of the voluntary tenant patrol against potential liability arising out of the activities conducted under this part. Subgrantees remain obligated to pay for the cost of their own insurance coverage.

The Department is unclear, however, as to the commenter's suggestion that reimbursement to local law enforcement agencies be considered as "* * * an offset to the PHA's payment in lieu of taxes (pilot)." Under section 6(d) of the U.S. Housing Act of 1937, PHAs are required to make a fixed payment in lieu of paying real and personal property taxes to a State, city, county, or other political subdivision. If this commenter is suggesting that a PHA could "reimburse" a local law enforcement agency for services provided under this rule by offsetting these sums against the amount that the PHA would otherwise be obligated to pay the unit of local government, then the Department is compelled to reject this suggestion.

Under such an approach , there would be no "reimbursement" to the local law enforcement agencies for providing additional security and protective services. Instead, the PHA would be redesignating the payments that it is already obligated to pay, and applying them instead to the reimbursement of local law enforcement agencies. This would result merely in a transfer of existing resources—no additional funding for the security services would be generated. HUD rejects this approach, since the Act clearly contemplates that the local law enforcement agencies are to be reimbursed for the cost of providing additional security and protective services to the projects under this program.

The NHA commented that the Department must be flexible in assessing the amount of law enforcement services that Indian tribes can provide, since it claimed that Federal allocations for policy services under the Indian Self-Determination and Education Assistance Act are limited, and police coverage of remote projects is very limited because of inadequate forces.

Under both the proposed rule and NOFA, HUD has construed "additional" to mean that the services to be funded under this category must be over and above those for which the local government is already contractually obligated under its Cooperation Agreement with the PHA or IHA. The Department continues to believe that this standard is appropriate and necessary to implement the statutory mandate that funding be provided for "additional" security and "protective services." Consequently, the final rule retains without modification the reference to the level of services required under the Cooperaton Agreement as a threshold requirement for obtaining funding under this category.

6. Physical Improvements (§ 961.10(c); section 2.1(c))

The NHA asserted that only 20.9% of the Navajo population have telephones, and that residents complain that they cannot call the police or emergency services because of a lack of telephone access. The housng authority urged HUD to include telephones and communication devices in the list of eligible physical improvements, as well as the installation of fences around projects, speed bumps, playgrounds, and other facilities for children and youth. The NHA also indicated that it could not afford to keep its project offices open at night because of high personnel costs, and asked that the cost of night staffing be considered an eligible "physical improvement."

Another housing authority asked HUD to include under the list of eligible physical improvements certain common area improvements. The authority claimed that such improvements would promote resident ownership and control of the property and would provide aesthetic enhancements that would result in the elimination of drug-related crime in the projects.

HUD will consider as an eligible program cost under this category *any* physical improvement that has as its primary purpose the elimination of drug-related crime in a PHA's or IHA's projects. Activities that are primarily aesthetic in nature, or that are otherwise peripheral to the statutory objective of eliminating drug-related crime in the proposed projects, are ineligible under this category. However, improvements that serve a security function and that are also aesthetic in nature are eligible program expenses under this category, *e.g.*, certain types of landscaping designed to inhibit traffic or escape routes.

The Department wants to emphasize, however, that this program is not intended to be a primary vehicle for physical improvements. HUD expects physical improvements to be funded mostly through the Department's CIAP program, which also provides funding for capital improvements.

With regard to night staffing costs, HUD notes that such costs do not constitute "physical improvements" and, hence, are ineligible expenses under this category. The Department would consider funding under § 961.10(a)

(employment of security personnel) night staffing costs that are designed to increase project security. Alternatively, HUD might consider funding night staffing costs that are related to the implementation of a drug elimination or prevention strategy under the "innovative programs" category, so long as the applicant is able to make the requisite showing under § 961.10(f).

7. Innovative Programs: (§ 961.10(f); section 2.1(f))

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the U.S. Department of Justice asked HUD to consider an approach that it has developed to address public housing drug abuse and delinquency prevention problems. The OJJDP's program would require coordinating and concentrating existing human service resources; providing targeted intensive services (*e.g.*, employment, recreation, remedial and alternative education, and law enforcement); mobilizing the participation and commitment of project residents; and developing individual and family service contracts to achieve self-sufficiency and to realize independence from public support and supervision.

HUD believes that the program developed by the OJJDP is extremely promising, and notes also that the Department is currently working with the OJJDP in a number of drug-related areas, including implementation of the Public Housing Drug Elimination program. Nevertheless, HUD does not have discretionary funds available under this program to develop a demonstration program using the OJJDP's approach. In addition, under the grant program established in this final rule, each PHA or IHA must independently determine the types of drug elimination activities that it will undertake in its targeted projects. HUD does not have the authority or discretion under the Act to require applicants to adopt a particular program approach. Consequently, PHAs must decide whether to implement the approach developed by the OJJDP, and contact that agency directly for further information and assistance.

A commenter objected to the standard adopted by HUD for determining whether a program is "innovative" under section 5124(6) of the Act. Under both the proposed rule and NOFA, HUD construed "innovative" to mean that the proposed program would use a "new or creative approach" to reducing the use of drugs in and around public housing projects. However, the commenter insisted that this standard was too nebulous and that "* * * any conceivable social or recreational activity could be construed as a means of reducing drugs, including installing a swimming pool, providing dance lessons, or taking a trip to the circus." As an alternative, this commenter suggested restricting the innovative programs category to "proven success stories."

While HUD agrees with this commenter that additional standards are needed under the "innovative programs" category, the Department does not want to limit this category to "proven success stories" since this would defeat the purpose of encouraging innovation. Instead, the Department is providing in this final rule that a program will be considered innovative if it implements a prevention or intervention strategy for reducing drugs in and around public housing projects that: (i) Was conceived of by the applicant or another entity, but that has never been implemented before; (ii) has been previously implemented by the applicant or other entities, but only on a project or demonstration basis; or (iii) has been successfully used in other jurisdictions; and (iii) the applicant establishes in its Plan under § 961.15(b)(3) that the program will be effective in achieving its strategy to eliminate drug-related crime in the projects proposed for assistance.

HUD is also expressly prohibiting the use of grant funds under this category for certain types of activities that it believes will not effectively promote an applicant's anti-drug related crime efforts. Many of these activities were derived from the list of ineligible activities under HUD's drug elimination efforts under the Comprehensive Improvement Assistance Program (CIAP). These activities include using grant funds to purchase T-shirts, caps, buttons, weapons or ammunition; to conduct an ad campaign; or to purchase controlled substances (illegal drugs) for any purpose, such as conducting a scam; for administrative costs related to screening or evicting tenants for drug-related crime activities; or for rallys, marches or other community celebrations.

Several commenters described various types of drug prevention strategies that they hoped would qualify for funding under the innovative programs category. Specifically, a school of nursing urged HUD to fund drug-related health care intervention for public housing residents, while other commenters suggested drug abuse prevention programs for youth and "in house tenant readjustment and rehabilitation programming."

Another commenter suggested a series of program strategies under this category, including: (1) Community development activities where a housing authority purchases materials and residents do the associated work; (2) innovative strategies for adult employment and business development; (3) exploring relationships with schools; and (4) the administrative activities necessary to process evictions for drug-related cases.

A housing authority asked HUD to permit the use of grant funds for public awareness campaigns, claiming that frequently "* * * the larger community has the opinion that everyone tolerates drugs in public housing simply because of the open and widespread presence of the problem." This commenter insisted that an attitude of "zero tolerance" of drugs in public housing needs to be fostered.

In addition, the Atlanta Housing Authority (AHA) asked whether funding could be used to expand its 24-hour foot patrols by adding a tenant patrol phase. The AHA claimed that this would result in an increase in project security, while providing jobs for public housing residents. The AHA also asked whether grant funds could be used to increase the number of its BEST Youth Clubs, which are aimed at providing youth with alternatives to drug abuse and gang violence, or to establish adolescent substance abuse treatment and outreach programs.

As indicated earlier in this preamble, the Department will provide funding under the innovative programs category for any activity that meets the requirements of § 961.10(f). However, HUD cannot provide a definitive response to the suggestions posed by these commenters until the requisite showing has been made in the PHA's or IHA's plan and grant application. The Department nevertheless wants to respond to some of the commenters' suggested approaches under this category.

First of all, HUD is expressly prohibiting the use of grant funds under this category to pay for the administrative costs related to screening or evicting tenants for drug-related activities. The Department does not believe that the funding of administrative costs associated with tenant drug-related evictions constitutes an innovative prevention or intervention strategy for eliminating drug-related crime. PHAs and IHAs should instead obtain funding for this critical effort out of their own operating subsidies.

With regard to the commenter's suggestion that grant funds be provided

for public awareness campaigns, the Department notes that this final rule expressly prohibits the use of funds for ad campaigns. Although HUD certainly believes that an attitude of "zero tolerance" of drugs needs to be fostered in public housing, it has been the Department's experience that public awareness campaigns typically involve high costs, but have limited impact. Consequently, funding for such campaigns will not be considered eligible expenses under this category.

In response to the AHA's suggestion that public housing residents be employed as security officers, the Department notes that the employment of security officers is funded under a separate provision of the final rule (§ 961.10(a)), and not under the innovative programs category. Moreover, the AHA should be aware that while public housing residents can be compensated for their services as security officers, they cannot be compensated for their participation on any voluntary tenant patrols established under § 961.10(e).

Finally, in response to the AHA's suggestion that grant funds be provided for substance abuse treatment and outreach programs, HUD notes that funding under the innovative programs category is available for substance abuse intervention, referral and outreach efforts. However, since the Department believes that direct substance abuse treatment is beyond the scope of this grant program, funds may not be used to provide either on- or of-site substance abuse treatment.

The NHA urged HUD to exercise a special sensitivity to IHA approaches that reflect cultural considerations, and to be flexible as to what constitutes an "innovative program" for purposes of the Indian population. The Department wants to emphasize that the innovative programs category is sufficiently flexible to permit cultural considerations to be taken into account, so long as the proposed program otherwise meets the criteria established under § 961.10(f).

A commenter objected to the restriction contained in the proposed rule limiting the innovative programs category to "youth." HUD notes that this restriction was unintentional, and that the 1989 NOFA for the program amended this provision to read, "youth and families." In this final rule, HUD has further expanded this language to read, "individuals and families."

A housing authority expressed concern that this program would favor PHAs that experience significant levels of drug-related activities, at the expense of PHAs that have successfully implemented anti-drug efforts and that need continuing support for their efforts. This commenter suggested that HUD should consider funding the innovative programs category separately from the other eligible activities under this rule to prevent successful programs from losing the war against drugs. In addition, the housing authority asked that funding be based upon the merits of the proposed program, and not the extent of a PHA's drug-related crime problems.

HUD does not have the discretion to adopt this suggestion, since the commenter is essentially asking for a change in the purpose of this grant program. The Act currently defines the purpose of the program as the "elimination" of drug-related crime in public housing projects, which necessarily presumes the existence of such a problem. The commenter is suggesting that the purpose should instead be changed to "prevention" of drug-related crime, which may simply involve a housing authority taking steps to ensure that drug-related crime does not occur in its projects at some point in the future. Although these terms are obviously interrelated, the Department does not have the discretion to separately fund prevention activities, or to evaluate such activities on the basis of alternative selection criteria. Nevertheless, HUD has reviewed the grants awarded to PHAs and IHAs in FY 1989, and notes that for applicants that demonstrated the existence of a drug-related crime problem grant funds were equally distributed between prevention and enforcement activities. The Department expects this trend to continue in subsequent funding rounds.

e. Plan (§ 961.15; Section 3.3)

The NHA commented that law enforcement priorities and activity levels, including prosecutorial efforts, might be difficult to document in the "real numbers" required by the Plan's drug-related crime assessment. This commenter urged HUD to allow IHAs to use the following kinds of data in lieu of such "hard" data: (1) Subjective police and prosecution estimates of the frequency of drug-related crime; (2) subjective resident accounts of drug-related crime; and (3) other anecdotal or subjective data. The NHA also claimed that since the resources of IHAs are limited, and IHA personnel are not accustomed to undertaking research related to law enforcement problems, HUD should consider funding an IHA's pre-grant application efforts.

Another commenter also urged HUD to consider under the Plan assessment letters from police departments, residents "* * * and others who can relate the relationship of drugs in public housing to the city in which it is located." The commenter felt that this type of qualitative assessment would be critical in determining the extent of drug-related crime in a project since such crime is often under-reported.

HUD agrees with these comments and has added § 961.15(b)(1)(ii) to permit applicants to submit a qualitative assessment of the drug-related crime problem in the projects proposed for assistance. This information is intended to supplement, and not to be submitted in lieu of, the quantitative data required under § 961.15(b)(1)(i). The Department encourages PHAs and IHAs to submit a qualitative assessment of their drug-related crime problems, including information from the PHA's own records, such as management/resident surveys on drug-related issues; vandalism costs and related vacancies attributable to drug-related crime; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the projects proposed for assistance. In establishing evaluation criteria to determine the success of their plan, and in selecting the methodology for gathering and analyzing information, (under § 961.15(b)(1) (iii) and (iv), respectively), applicants are required to reference the quantiative assessment portion of their plan, and any qualitative data they choose to provide.

With regard to the NHA's request that it be reimbursed for the cost of preparing a grant application, HUD is unable to comply with such a request since it does not have the authority under the Act to fund pre-grant application costs.

f. Application Requirements (§ 961.20; Section 3.5)

In the proposed rule and NOFA, HUD required the CEO of a locality in which targeted projects are located to certify that the PHA's plan assessment [of the PHA's drug problem, and of its current anti-drug related crime activities) were both complete and accurate. A commenter objected to this requirement, arguing that the PHA, and not the CEO, should provide this certification since it possesses the relevant data and has the best knowledge of the facts and circumstances to which the certifications relate. HUD agrees with this comment and now provides that the PHA (and not the chief executive officer) must provide this certification.

g. Application Selection (§ 961.25; Section 3.6)

HUD received a comment from Senator Frank Lautenberg (D-New Jersey) objecting to the proposed rule's discretionary ranking provisions under § 961.25 (c) and (d). Subsection (c) provided HUD with the discretion in the application selection process to "* * * ensure an equitable distribution of grant funds among the highest ranked applications submitted by PHAs and IHAs." Under subsection (d), HUD was authorized to provide an equitable geographical distribution of grant funds among urban and rural areas, and among PHAs and IHAs of varying sizes.

Senator Lautenberg maintained that there is nothing in the legislative history to the Act that would authorize HUD's exercise of discretion under these two subsections of the rule. He asserted that the selection critieria established under section 5125 of the Act are the exclusive bases for awarding a grant under this program, and urged HUD to eliminate the discretionary provisions in the final rule.

Two other commenters claimed that although they supported "* * * equitable fair share distribution of resources as a general principle," they maintained that grant funds under this program should be distributed on a competitive "need basis" because of the limited amount of funds and the need to obligate funds quickly. As a result, these commenters also urged HUD to award grants strictly on the basis of the statutory selection criteria, and to eliminate the discretionary provisions under subsections (c) and (d).

However, other commenters expressly asked HUD to take particular PHA concerns into account during the grant selection process. One commenter urged HUD to modify the statutory selection criteria by providing special consideration to small- and medium-sized housing authorities with relatively high needs. In addition, the Navajo Housing Authority asked HUD to give special priority to Indian needs and to exercise flexibility in the allocation of grant funds and selection of IHA plans, and to provide for decentralized funding by regional offices.

Although the Department believes that it has the discretion under the Act to ensure that grant funds are equitably distributed, both geographically and on the basis of a PHA/IHA distribution, it nevertheless removed these discretionary provisions for the 1989 NOFA in response to public comments. These provisions are also omitted in this final rule. The omission of these provisions from the NOFA and from this final rule does not suggest that future funding will ignore geography or the special needs of Indian Housing Authorities. Instead, the rule has been revised to afford the Department considerable discretion, under the statutory selection criteria, to tailor each funding round to meet these and other relevant considerations.

Specifically, the final rule now provides that applicants will be evaluated on the basis of the four statutory selection criteria at $961.25 of the rule. However, as a result of its experience in implementing the FY 1989 funding round under this program, and in order for the Department to more effectively relate information provided in the applicant's plan to the evaluation criteria, HUD has made a number of revisions to the factors it will consider in implementing these statutory selection criteria. (For further discussion, see Part III of this preamble entitled "Other Changes.")

The Department has also removed the provision contained in the proposed rule and NOFA concerning the maximum number of points to be awarded for each selection criterion, and the process for ranking and selecting applicants under this program. Instead, § 961.20(b) of the final rule now provides that HUD will publish Notices of Fund Availability (NOFAs) in the Federal Register to inform the public of the availability of grant amounts under this program, and to provide specific guidance with respect to the grant process, including the deadlines for the submission of grant applications, the limits (if any) on maximum grant amounts, and the process for ranking and selecting grantees. HUD will also indicate in these NOFAs the maximum number of points to be awarded for each selection criterion, with the understanding that each selection criterion will be assigned a significant number of the overall points awardable in any competition. The Department believes that by placing this information in NOFAs instead of this final rule, it will have the flexibility to tailor each grant competition to provide an equitable distribution of grant funds, while providing the public with full and fair disclosure of the competition requirements.

A housing authority indicated that it was concerned that the selective rating criteria under the proposed rule would eliminate from the selection process several public housing projects "* * * that are in dire need." The authority claimed that since it is categorized as "operationally troubled," it would be disadvantaged under this program by its limited administrative capability. The housing authority also asserted that it would be disadvantaged in the application selection process because of limited local government and community support of the PHA's efforts.

HUD concedes that a housing authority with both limited administrative capability and local governnment and community support may be disadvantaged under the program's statutory selection criteria. Nevertheless, under this final rule, an applicant with limited administrative capability can still obtain points to demonstrate that it has the capability to implement its drug elimination plan.

Specifically, under section 5125(3) of the Act, HUD is required to evaluate "the capability of the public housing agency to carry out the plan." The Department provides in this final rule that it will consider as one factor in assessing a PHA's capability to carry out its plan its administrative capability to manage its projects. In evaluating administrative capability, HUD will consider the progress made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD.

HUD will also consider under section 5125(3) numerous other factors besides administrative capability to determine an applicant's capability to implement its plan. These factors include the extent to which the applicant has implemented effective eviction and screening procedures to determine an individual's suitability for public housing; whether the PHA or IHA has a strong track record in the implementation and management of prior HUD grants (*i.e.*, CIAP, youth sports, child care, or funding under this part) or other Federal drug-related grant programs; and whether the applicant has already undertaken successful anti-drug related crime efforts that will serve as the foundation for a grant under this part.

Consequently, a housing authority with limited administrative ability can still demonstrate that it has the capability to implement its plan, either by establishing that it is a troubled authority that has made significant progress in achieving goals established under its Memorandum of Agreement executed with HUD; or by obtaining a significant number of points on the other factors used to evaluate its capability to implement the plan.

A commenter encouraged HUD to provide for field office input during the application review process. The Department notes that both the NOFA and the proposed rule provided for HUD regional and field office input during the grant application process. Even though this final rule does not describe the

process for ranking or selecting applicants, the Department fully expects subsequent NOFAs to provide for field and regional office input into the grant selection process.

h. Resident Participation: (§§ 961.3; 961.25(b)(2)(ii); Section 1.2; Section 3.6(b)(2)(ii))

The New York City Housing Authority (NYCHA) asked HUD to specify in the final rule the extent to which a PHA will be protected under State or Federal law from liability for an RMC's or RC's management of its anti-drug related crime program.

HUD has deliberately chosen not to specify in this rule the circumstances under which a PHA would or would not be liable for the acts of an RMC or RC, since this will clearly vary depending upon the jurisdiction in which the PHA and RMC are located, and the nature and extent of the agreement between the two parties. Nevertheless, the final rule has been redrafted to provide that whenever a PHA wants an RMC or RC to manage its anti-drug program, it must address in the subgrant agreement under § 961.30(c): (1) The nature of the activities to be undertaken by the RMC or RC, and the scope of its authority; and (2) the amount of insurance coverage to be obtained by the PHA or IHA and the subgrantee to protect their respective interests.

Commenters differed in their views over HUD's decision to provide points in the grant selection process to PHAs that delegated "substantial program management responsibilities" to RMCs or RCs under the plan. A couple of commenters claimed that the proposed rule "* * * appeared to be a vehicle to promote HUD's policy position on resident management." These commenters also asserted that HUD had exceeded its authority under the Act, since a PHA that obtained points because of RMC or RC involvement would not necessarily reflect a greater drug-related crime problem than a PHA that lacked RMC involvement.

However, other commenters applauded HUD's efforts to involve RMCs, RCs and other resident groups in the planning and implementation of the anti-drug program, and even urged the Department to increase the maximum number of points for resident involvement.

The NHA asked HUD to consider in its assessment of resident participation "* * * the special demographic, geographic, funding and cultural problems encountered by IHAs." This commenter was concerned that, because of certain cultural factors hindering the establishment of RMCs and RCs in Indian jurisdictions, IHAs would be disadvantaged by the additional points awarded to applicants demonstrating RMC or RC involvement in their plans.

As a result of its nationwide experience in the drug elimination effort, HUD firmly believes that the involvement of public housing residents is a critical factor in the effort to successfully eliminate drug-related crime in a housing authority's projects. Consequently, the Department has the discretion to give preference to applicants that actively seek to involve resident groups in the implementation of their anti-drug related crime programs.

Moreover, HUD notes that the provision contained in the proposed rule awarding points for RMC or RC involvement was subsequently expanded in the September 18, 1989 NOFA to include any "* * * organized group of project residents who will share with the PHA or IHA in the development of the grant application and in the management or operation of the program." In this final rule, HUD is further revising this standard to provide that if an RMC or RC does not exist, the Department will evaluate instead "the extent to which project residents are involved in the planning and development of the grant application and strategy, and the extent to which project residents will be involved in the implementation of the applicant's plan." Since this standard can be satisfied by either a PHA or IHA, it is being retained by HUD as an indicator of the level of community support for a housing authority's anti-drug related crime efforts.

The NYCHA claimed that while the proposed rule encouraged PHAs to allocate "substantial program management responsibilities" to RCs and RMCs, the rule failed to describe the type or degree of responsibilities that HUD considers to be "substantial." The Department agrees with this comment and provides in this final rule that "substantial program management responsibilities" means that an RMC or RC will participate in the implementation or evaluation of the PHA's strategy under § 961.15(b)(3). (As noted above, applicants will also be separately evaluated on the extent to which an RMC or RC (or project residents) will be involved in the planning and development of the grant application and strategy.)

The NYCHA also asserted that HUD has no authority to waive the requirements of 24 CFR Part 964 to allow Resident Councils to undertake management functions. It claimed that, "* * * to the extent the rule proposes to waive statutory requirements, it is patently unlawful." Furthermore, the NYCHA argued that under section 20 of the U.S. Housing Act of 1937, HUD's authority to provide waivers is narrowly defined.

While it is true that HUD's authority to provide waivers under section 20 of the U.S. Housing Act of 1937 is narrowly defined, the Department believes that section 20 is not, nor was it ever intended to be, the exclusive basis for organizing resident management. As a result, there is no statutory bar to permitting RCs to assume management functions under this program, and hence no basis for requiring a waiver of the section 20 statutory requirements. HUD is retaining in this final rule the provision enabling Resident Councils to undertake management functions under this program.

i. Reporting Requirements (§ 961.35; Section 4.2)

A commenter stated that the reporting requirements contained in the proposed rule were not sufficiently stringent, and urged HUD to require grantees to periodically submit reports tracking drug-related crime and fund expenditures. HUD notes that the reporting requirements contained in the proposed rule were substantially expanded in the 1989 NOFA. Under the NOFA, each grantee was required to submit two semi-annual progress reports detailing the PHA's or IHA's progress in achieving its Plan objectives, and a post-grant report. HUD has modified these reporting requirements to specifically request information from the applicant concerning any changes in crime statistics or other indicators drawn from the applicant's plan assessment (*i.e.*, such as vandalism, etc.).

The Department has also included a new provision at § 961.30(g) concerning sanctions. Under that section, HUD provides that it may take various specified sanctions against a grantee for failing to comply with program requirements or applicable Federal law. Such sanctions may also be imposed if the grantee fails to make satisfactory progress toward meeting its drug elimination goals, as specified in its plan strategy under § 961.15(b)(3) and reflected in its progress reports under § 961.35. HUD believes that these modified reporting requirements and sanctions will prevent financial abuse under the program, while ensuring satisfactory progress toward a grantee's stated drug elimination goals.

III. Other Changes

In addition to the changes made in response to public comments, HUD on

its own initiative has made the following changes in this final rule:

(1) In the proposed rule and NOFA for this program, HUD requested information from applicants as part of their plan under § 961.15 and their grant application under § 961.20. In this final rule, the Department is incorporating much of this information, as well as other data, into the evaluation factors used to implement the statutory selection criteria at § 961.25.

HUD is also providing in this rule that the Secretary may include such additional factors as necessary and appropriate to implement these selection criteria. If the Secretary determines that additional factors are required to implement the statutory criteria, HUD will publish these factors in the Federal Register in any Notice of Fund Availability allocating funds under this program.

Finally, it should be noted that in the proposed rule and NOFA for this program, HUD evaluated resident involvement under the statutory selection criterion that assesses the quality of an applicant's plan. Under this final rule, HUD is evaluating resident involvement under the more appropriate statutory criterion assessing local government and community support of the PHA's anti-drug related crime efforts.

(2) The Department has included a new Subpart D to this rule which provides information on "mini-grants." These grants may comprise up to 10 percent of any grant funds appropriated under this part, and will be considerably smaller in size than the regular grant awards. The purpose of these grants is to provide housing authorities with seed money for any of the eligible anti-drug related efforts specified at § 961.10 of the rule, and to leverage community resources. In particular, HUD views the mini-grant as a means of encouraging the use of existing resources to combat drug-related crime, and is providing in this final rule that additional points will be awarded to applications that demonstrate a dollar-for-dollar match of the requested mini-grant funds.

To facilitate the submission and processing of mini-grant applications, HUD has limited the application and plan requirements under subpart D of this final rule. Furthermore, even though mini-grant applications will be evaluated on the same statutory selection criteria as regular grant applications, HUD has eliminated several of the factors that it will consider in evaluating these selection criteria. HUD is also limiting the reporting requirements under the mini grants. Instead of requiring a progress report (which must be submitted semi-annually for the regular grants), the Department is requiring only the submission of a post-grant report within 60 days of the completion of the grant term.

When funds are next appropriated for this program, HUD will publish in the Federal Register a Notice of Fund Availability (NOFA) to inform the public of the availability of grant funds. HUD will provide further guidance in the NOFA on the mini-grant, including the maximum amount of any award, the maximum number of points to be awarded to each of the selection factors, and any other pertinent data.

(3) Applicants are required under their plans to provide a quantitative assessment of their drug-related crime problems, and may voluntarily choose to complement these data with a qualitative assessment as well. In this rule, HUD provides examples of various assessment methods for applicants to use when providing the qualitative and quantitative data under the plan. Suggested methods include surveys; on-site reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library checkout records, etc.); research or studies conducted by local officials; and an analysis and critique of a particular drug related crime problem.

(4) HUD has removed the reference under § 961.10(g) that would authorize RMCs and RCs to use program funds to establish drug treatment programs. Grant funds under this category may be used instead for other drug abuse assistance efforts, such as drug intervention, referral, counseling and outreach efforts.

(5) The rule revises a number of the plan requirements at § 961.15 and the application requirements at § 961.20 to conform to the revised selection factors discussed at No. 1 above. In addition, some certifications that were previously required under the proposed rule and NOFA have been eliminated in this final rule. These certifications are still a condition of receiving an award under this program, and must be provided by a PHA in the grant agreement it executes with HUD. Certifications that have been omitted in this final rule include the PHA's certification that it will collect, maintain and provide to HUD additional data to evaluate the effectiveness of grant funds under this program; and the PHA's certification that there is a cooperation agreement between members of the tenant patrol and the local law enforcement agency, in accordance with § 961.10(e)(2). (This latter certification has been replaced by a certification from the chief of the local law enforcement agency that it will enter into a cooperation agreement with the voluntary tenant patrol.)

(6) The definition of § 961.5 of "chief executive officer of a State or a unit of general local government" has been revised by eliminating the reference to "or his or her designee." The Department believes that this change is necessary to clarify the entity who is authorized to act on behalf of a State or locality under this program.

IV. Environmental Review

This final rule amends 24 CFR part 50 by adding a new categorical exclusion for grants under part 961 from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). This exclusion will not eliminate review under related environmental authorities, such as the National Historic Preservation Act of 1966. The exclusion is premised on the fact that drug elimination grants typically do not have the potential for significant impact to the physical environment. To the extent that grant funds are used for physical improvements to enhance security under § 961.10(c), that section provides that the improvements may not involve the demolition of any dwelling units in a project.

As a condition of grant approval, HUD will perform an environmental review under §§ 961.25(b) or 961.29(b) of this rule to the extent required under NEPA and applicable related authorities at 24 CFR part 50.

V. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government

agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide grants to PHAs and IHAs to eliminate drug-related crime in selected lower income housing projects. In certain instances, the PHA can provide grant funds under the program to nonprofit Resident Management Corporations and Resident Councils for certain eligible program activities. Although small entities could participate in the program, the rule would not have a significant economic impact on them.

Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this rule have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is not necessary, however, since the rule essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this rule have "federalism implications" within the meaning of the Order. The rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help PHAs and IHAs to help carry out their plans. As such, the program would help PHAs and IHAs combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is unnecessary, however, since the rule generally tracks the statute and involves little implementing discretion.

This final rule was listed as Sequence No. 1235 in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16260) under Executive Order 12291 and the Regulatory Flexibility Act.

The Public Housing Drug Elimination Program is not listed in the Catalog of Federal Domestic Assistance.

The collection of information requirements contained in this final rule have been approved by OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Certain sections of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Tabulation of Annual Reporting Burden—Final Rule—Public Housing Drug Elimination Program

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Plan for addressing drug-related crime problem(s) includes assessment, current activities, strategy.	961.15	1,000	1	1,000	24	24,000
Request for tenant comments on plan and application	961.18	5,000	1	5,000	1	5,000
Application requirements: SF-424, certifications, narratives, copies to tenant comments.	961.20	1,000	1	1,000	30	30,000
Plan requirements for implementation of Subpart D, Mini-Grants	961.28(a)	1,000	3 times (avg)	3,000	10	30,000
Application requirements for Mini-Grants	961.28(b)	1,000	3 times (avg)	3,000	15	45,000
Periodic reports on fund expenditures, data tracking drug-related crime.	961.35(a)	1,000	2 times	2,000	24	48,000
Post Plan report after 90 days	961.35(b)	1,000	1	1,000	8	8,000
Total reporting burden						190,000

List of Subjects

24 CFR Part 50

Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Public housing, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 50, and adds a new 24 CFR part 961, as set forth below.

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for 24 CFR part 50 is revised to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 50.20 is amended by adding a new paragrpah (p), to read as follows:

§ 50.20 Categorical exlusions.

* * * * *

(p) Grants under the Public Housing Drug Elimination Program (42 U.S.C. 11901, *et seq.*, codified at 24 CFR part 961).

3. A new part 961 is added to chapter IX, title 24 of the Code of Federal Regulations, to read as follows:

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Subpart A—General

Sec.
961.1 Purpose.
961.3 Encouragement of resident participation.
961.5 Definitions.

Subpart B—Use of Grant Amounts

961.10 Eligible activities.

Subpart C—Application and Selection

961.15 Plan.

Authority: Section 5127, Public Housing Drug Elimination Act of 1988 (U.S.C. 11901 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 961.1 Purpose.

The purposes of the Public Housing Drug Elimination program are to:

(a) Eliminate drug-related crime on or about the real property comprising the public housing project;

(b) Encourage public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to develop a plan for addressing the problem of drug-related crime under this part; and

(c) Make available Federal grants to help PHAs and IHAs carry out their plans.

§ 961.3 Encouragement of resident participation.

(a) The elimination of drug-related crime in public housing projects requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related criminal activity in their projects, Resident Councils (RCs) and Resident Managment Corporations (RMCs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR part 964. The Department encourages PHAs and IHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. If neither an RMC or RC exists, the Department encourages PHAs and IHAs to share with project residents the development of the grant application and the implementation of the program. Areas in which this partnership can be particularly significant include (but are not limited to) the planning and execution of strategies and activities to eliminate drug-related crime in public housing projects, the institution of voluntary tenant patrols (§ 961.10)(e), and the development by RMCs and incorporated RCs of security and drug-abuse prevention programs involving site residents (§ 961.10(g)).

(b) To emphasize the importance that the department attaches to full resident participation in activities assigned under this part, § 961.18 requires applicants to:

(1) Give RMCs and RCs, as well as the residents of the targeted projects, a reasonable opportunity to comment on the application; and

(2) Give serious consideration to these comments in developing the application.

§ 961.5 Definitions.

Applicant means a PHA or IHA that applies for a grant under this part.

Chief executive officer of a State or a unit of general local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

Controlled substance means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954, as codified at 26 U.S.C. 5001 *et seq.*

Drug-related crime means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance.

Governmental jurisdiction means the unit of general local government, State, or Indian tribe in which the public housing project administered by the applicant is located.

Grantee means an applicant that executes a grant agreement with HUD under this part.

Hud or *Department* means the United States Department of Housing and Urban Development.

Indian means any person recognized as being an Indain or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority (IHA) means any entity that:

(1) Is authorized to engage in or assist in the development or operation of lower income housing for Indians; and

(2) Is established either by exercise of the power of self-government of an Indian tribe independent of State law, or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the public housing projects administered by the applicant. In Indian jurisdictions, this also includes tribal prosecutors that assume law enforcement functions analogous to a police department or the BIA. More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's projects.

Public housing agency (PHA) means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for lower income families.

Public housing project or *project* means lower income housing and all necessary appurtenances developed, acquired, or assisted by a PHA or an IHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the PHA or IHA.

Resident Council (RC) means: an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent.

(2) It may represent residents in more than one project or in all of the projects of a PHA or IHA, but it must fairly represent residents from each project that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the project or projects that the resident organization or resident council represents.

Resident Management Corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964, or with an IHA in accordance with the requirements of

this part. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(i) Approves the establishment of the corporation; and

(ii) Has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(5) Its voting members must be residents of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of Part 964 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RC so long as the corporation meets the requirements of this part for a resident council.)

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Subpart B—Use of Grant Amounts

§ 961.10 Eligible activities.

Activities assisted under this part must be directed toward the elimination of drug-related crime in public housing projects, and may include one or more of the following activities. Incidental costs related to carrying out these activities are also eligible program costs, provided the PHA or IHA has in place a cost allocation plan. Grantees are required under § 961.30(b) to obtain adequate insurance coverage to protect themselves against potential liability for the eligible activities under this program. In addition, grantees must obtain insurance coverage for the members of the voluntary tenant patrol for the patrol's activities under paragraph (e) of this section. These insurance costs are eligible incidental program expenses. Subgrantees under this part are required to obtain their own insurance coverage.

(a) *Security personnel.* Employment of security personnel in public housing projects. Security personnel employed under this section are required as a condition of employment to meet all relevant State, tribal or local insurance, training, licensing, or other similar, requirements.

(b) *Additional security and protective services.* (1) Reimbursement of local law enforcement agencies for the cost of providing additional security and protective services for public housing projects. The security and protective services provided must be either:

(i) A service that no local law enforcement agency (or agencies) provided for public housing projects administered by the grantee within the six months immediately preceding the publication of a NOFA allocating assistance under this part; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public housing projects administered by the grantee within the six months immediately preceding the publication of a NOFA allocating assistance under this part.

(2) Services to be funded under this section must be over and above those for which the local government in which the proposed project is located is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract).

(c) *Physical improvements.* Physical improvements in public housing projects that are designed to enhance security. These improvements may include (but are not limited to) the installation of lighting systems, bolts, or locks, or the reconfiguration of common areas to discourage drug-related crime. Such improvements may not involve the demolition of any units in a project. A PHA may not use grant funds under this part for any physical improvements that would result in the displacement of persons.

(d) *Employment of investigators.* (1) Employment of one or more individuals to:

(i) Investigate drug-related crime on or about the real property comprising any public housing project; and

(ii) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) Investigators employed under this section are required as a condition of employment to meet all relevant State, tribal, or local training, insurance, licensing, or other similar, requirements.

(e) *Tenant patrols.* (1) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary public housing tenant patrols acting in cooperation with officials of local law enforcement agencies. Patrols established under this section are expected to undertake surveillance for drug-related criminal activity in the projects proposed for assistance under this part, and to report such activities to the cooperating local law enforcement agency. Grantees are required under § 961.30(b) to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this section. Patrol members are advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a PHA's or IHA's liability insurance. Patrol members are also expressly prohibited from carrying or using firearms under this section.

(2) The cooperating local law enforcement agency and the members of the tenant patrol are required to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the tenant patrol, and the patrol's scope of authority; and

(ii) The types of activities that a tenant patrol is expressly prohibited from undertaking, including the carrying or use of firearms in the course of its patrol.

(3) Tenant patrols established under this section are required to meet all relevant State, tribal, or local training, insurance, licensing, or other similar, requirements.

(f) *Innovative programs.* (1) Innovative programs to reduce the use of drugs in and around public housing projects. A program will be considered "innovative" under this paragraph if it implements a prevention or intervention strategy for reducing drugs in and around a public housing project that:

(i) Was conceived of by the applicant or another entity, but that has never been implemented; or

(ii) Has been previously implemented by the applicant or another entity, but

only on a pilot or demonstration basis; or

(iii) Has been successfully used in other jurisdictions; and

(iv) The applicant establishes in its plan under § 961.15(b)(1) that the program will be effective in achieving its strategy for eliminating drug-related crime in the projects proposed for assistance.

(2) Activities that may be funded under this paragraph include (but are not limited to) innovative drug education, intervention and referral, outreach efforts, and programs to prevent drug-related crime involving recreational, vocational, and educational activities and other constructive alternatives for individuals and families. HUD will not provide funding under this section for T-shirts, caps, buttons, weapons, ammunition, ad campaigns, or for the purchase of controlled substances (*i.e.*, illegal drugs for use in scam operations); the administrative costs related to screening or evicting tenants for drug-related crime; or for rallys, marches, or community celebrations.

(g) *RMCs and RCs.* Funding of RMCs and incorporated RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) law enforcement activities, drug education, drug intervention and referral, counseling and outreach efforts.

(Approved by the Office of Management and Budget under control number 2577–0124.)

Subpart C—Application and Selection

§ 961.15 Plan.

(a) *Requirement of plan.* (1) Each application for a grant under this part must include a plan for addressing the problem of drug-related crime on the premises of the public housing projects proposed for funding.

(2) None of the requirements contained in this part shall be interpreted to permit or encourage a PHA, IHA, RMC or RC from acting in violation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations issued at 24 CFR part 8, or Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3620 (Fair Housing Act) and implementing regulations issued at 24 CFR part 100.

(b) *Plan content.* The plan referred to in paragraph (a) of this section must contain the following elements:

(1) *Assessment of problem.* An assessment of the drug-related crime problem, and the problems associated with drug-related crime, in the projects administered by the applicant and that are proposed for funding under this part. This assessment, which must describe the nature and scope of these problems, is intended to serve as the basis and rationale for determining the applicant's drug elimination strategy for the proposed project. In addition, the assessment must identify the applicant's demonstrated need and indicate how the activities proposed for funding under this part will address that need. The assessment must include:

(i) *Objective data.* The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the PHA's or RMC's records on the types and sources of drug-related crime in the projects proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's projects (*e.g.*, age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs or RCs. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (*e.g.*, 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the PHA's or IHA's targeted projects, and how the applicant's overall plan and strategy under paragraph (b)(3) of this section is specifically tailored to address these drug-related crime problems.

(ii) *Other data on the extent of drug-related crime.* The data provided under paragraph (b)(1)(i) of this section may, as necessary, be integrated with, and complemented by, information from other sources which have a direct bearing on drug-related crime problems in the projects proposed for assistance under this part. Examples of these data include: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted projects; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the projects proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(iii) *Methodologies.* The assessments provided under paragraphs (b)(1)((i) and (b)(1)(ii) can be accomplished through a variety of methods, using more than one existing source of information. Some examples of assessments include: surveys; on-site reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, *etc.*); research or studies conducted by local officials; and analysis and critique of a particular drug-related crime problem.

(iv) *Program evaluation.* The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section; discuss the types of information the PHA will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information.

(2) *Current and past activities to address problem.* A narrative discussion of the applicant's current activities to eliminate drug-related crime in its targeted projects, including its efforts to implement eviction and screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202); to implement a plan to reduce vacancies; or to undertake other management practices to eliminate drug-related crime in the applicant's projects. The applicant should also describe its experience in implementing and managing other HUD grant programs (*e.g.* CIAP, youth sports, child care, etc.), and other Federal

antidrug related crime programs; describe the current activities being undertaken by community and governmental entities, RMCs and RCs, or other project residents, to address the problem of drug-related crime in the projects proposed for assistance under this part; and provide a listing of the names of agencies or other entities (including the applicant) currently providing assistance to address the drug-related crime problem in the targeted projects.

(3) *Strategy for addressing problem.* A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance under this part. The discussion must indicate how the applicant's proposed strategy will respond to its demonstrated need (as identified in § 961.15(b)(1)(i) and (b)(1)(ii)) in the targeted projects, and offer a realistic approach for dealing with the applicant's drug-related crime problem, taking into account the nature and extent of the problem, the amount of funding requested under this part, and the local and other non-HUD funding and other resources that reasonably may be expected to be available to combat the problem. At a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(i) A description of each component of the applicant's strategy, including activities to be undertaken with funding under this part, and how these components interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves multiple management practices, enforcement/security techniques, and a combination of intervention, referral and prevention programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current services.

(ii) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this part, and from other resources) that may reasonably be expected to be available to carry out each component, and a discussion of how funding decisions were reached;

(iii) A timeframe for beginning and completing each component of the strategy;

(iv) An estimate of the results that each component of the strategy, as well as the overall strategy, is expected to achieve for each year that the strategy is in effect and upon its completion, as identified under § 961.15(b)(1)(iv) of this section;

(v) The resources that the PHA or IHA may reasonably expect to be available at the end of the grant term to continue the anti-drug related crime effort;

(vi) The role of RMCs, RCs in planning, implementing and evaluating the applicant's strategy (or, if neither exists, the role of project residents who will share with the applicant in planning and developing the grant application and strategy, and in implementing the applicant's plan). The applicant must also provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs involving site residents under § 961.10(g). The applicant must also describe the role of any other entities (*e.g.*, local and State governments and community organizations) in planning and carrying out the strategy; and describe the funds or other resources (e.g. staff or in-kind resources) to be provided by resident or community organizations, local and State governments, and project residents to implement the plan strategy;

(vii) If grant amounts are to be used for physical improvements under § 961.10(c), a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR Part 968; and

(viii) If grant amounts are to be used for innovative programs to reduce the use of drugs in and around public housing projects under § 961.10(f), a statement by the applicant as to the nature of the program, a discussion of how the program represents an innovative prevention or intervention strategy as required under § 961.10(f), and how the program will further the PHA's strategy to eliminate drug-related crime in the projects proposed for assistance.

(Approved under Office of Management and Budget control number 2577–0124)

§ 961.18 Resident comments on grant application.

The applicant must provide the residents of projects proposed for funding under this part, as well as any RMCs or RCs that represent those residents (including any PHA-wide RMC or RC), with a reasonable opportunity to comment on its application under § 961.20 (including its plan under § 961.15). The applicant must give these comments careful consideration in developing its plan and application.

(Approved under Office of Management and Budget control number 2577–0124)

§ 961.20 Application requirements.

(a) *Contents.* To qualify for a grant under this part, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF–424 (including SF–424A);

(2) The plan referred to in § 961.15;

(3) Copies of any written resident comments submitted to the PHA under § 961.18;

(4) A certification by the PHA or IHA applicant that:

(i) The applicant's assessment under § 961.15(b)(1) of its drug-related crime problem, and the problems associated with drug-related crime, is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects (as required by § 961.15(b)(2)), and the information provided under § 961.15(b)(3) regarding the applicant's strategy for addressing the problem of drug-related crime in its projects, are both accurate and complete.

(ii) The applicant must submit with its grant application a certification that it will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(iii) The applicant must submit a certification and disclosure in accordance with the requirements of Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreeements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan;

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant amounts provided under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under § 961.10(b) meet the requirements of that section;

(iii) The relevant governmental jurisdiction will take the actions

described in the applicant's strategy under § 961.15(b)(3);

(iv) If applicable, that the locality is meeting its obligations under the Cooperation Agreement with the PHA or IHA, particularly with regard to law enforcement services. Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so;

(6) A certification from the chief of the local law enforcement agency, if applicable, that the agency has entered into, or will enter into, a cooperation agreement with the voluntary tenant patrol, in accordance with the requirements of § 961.10(e);

(7) A certification, if applicable, by the RMC or RC (or, where neither exists, by other project residents) for a project proposed for funding under this part that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete;

(8) Letters of commitment from governmental or private entities which describe the financial or other resources (*e.g.*, staff or inkind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this part.

(b) *Notice of fund availability.* HUD will publish Notices of Fund Availability (NOFAs) in the **Federal Register** as appropriate to inform the public of the availability of grant amounts under this part. The Notices will provide specific guidance with respect to the grant process, including the deadlines for the submission of grant applications, the limits (if any) on maximum grant amounts, the maximum number of points to be awarded for each selection criterion under § 961.25, and the process for ranking and selecting applicants. The Notices will also include any additional factors that the Secretary has determined to be necessary and appropriate to implement the statutory selection criteria under § 961.25.

(Approved under Office of Management and Budget control number 2577–0124)

§ 961.25 Application selection.

(a) *Selection criteria.* Each application submitted by a PHA or IHA for a grant under this part will be evaluated on the basis of the following selection criteria.

(1) *The extent of the problem of drug-related crime in the applicant's projects.* In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by:

(A) Crime statistics and other data provided under § 961.15(b)(1)(i) on the number and types of drug-related crimes committed within the applicant's targeted projects; trend data indicating an increase or decrease in drug-related crime over a period of time; and descriptive data on the types of offenders committing drug-related crime in the applicant's projects (such as age, residence, *etc.*).

(B) To the extent that data under § 961.15(b)(1)(i) are not available, HUD will also consider information derived from resident/staff surveys or on-site reviews, or from the applicant's own records or those of other local agencies, on the extent of drug-related crime and the problems associated with drug-related crime, in the applicant's projects. This information may include (but is not limited to) the number of lease terminations or evictions for drug-related criminal activity; emergency room admissions for drug use or drug-related crime; vandalism costs and vacancies attributable to drug-related crime; the number of residents placed in treatment for substance abuse; the school drop-out rates and absenteeism rates for youth, etc.

(C) In awarding points under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section, HUD will evaluate the extent to which the applicant has provided raw data that reflects a severe drug-related crime problem, both in terms of the frequency and nature of the drug-related crime incidents and the problems associated with drug-related crime in the projects proposed for funding; the extent to which such data are meaningfully grouped by the variables listed under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section; and the extent to which such data reflect an increase in drug-related crime over a period of time in the projects proposed for assistance.

(ii) The relative severity of the drug-related crime in the applicant's projects, as reflected by the statistics submitted under paragraph (a)(1)(i)(A) of this section, in comparison to other applications submitted in the region for funding under this part.

(iii) The extent to which the applicant has analyzed the data compiled under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section, and has clearly articulated its needs for reducing drug-related crime in the projects proposed for assistance.

(iv) Such additional factors as the Secretary determines to be necessary and appropriate.

(2) *The quality of an applicant's plan to address drug-related crime in the projects proposed for assistance.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant establishes a relationship between its drug-related crime problem (as identified in its plan assessment under § 961.15 (b)(1)(i) and (b)(1)(ii)) and its strategy for eliminating drug-related crime under § 961.15(b)(3); the extent to which the applicant has considered and articulated its strategy goals and objectives; the extent to which the applicant's strategy provides for a comprehensive approach to eliminating drug-related crime in its projects (*e.g.*, the strategy includes multiple management practices, enforcement/security techniques, and a combination of intervention, referral and prevention programs); and the extent to which funding under this part will be targeted to the applicant's identified needs.

(ii) The extent to which the applicant's strategy is realistic, given the amount of funding requested under this part in relation to the overall strategy, and the timeframe indicated by the applicant for beginning and completing each component of the strategy; and the extent to which the applicant provides a cost analysis for each component of its strategy and describes the financial and other resources (under this part and other sources) that may reasonably be expected to be available to carry out each component; describes the activities to be funded under this part and indicates how such activities will be coordinated with, and complemented by, current services; and describes how funding decisions were reached.

(iii) The extent to which the applicant has developed an evaluation process that includes measures it believes to be critical in evaluating the success of the plan; the extent to which the applicant has described in its plan the information to be gathered, and the method to be used to gather this information; and the extent to which the applicant relates the evaluation process to its assessment of the drug-related crime problem in the targeted projects (*e.g.*, tracking of changes in identified crime statistics).

(iv) The extent to which the plan identifies non-HUD resources that the applicant reasonably expects to be available for the continuation of the program at the end of the grant term.

(v) Such additional factors as the Secretary determines to be necessary and appropriate.

(3) *The applicant's capability to carry out its plan.* In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative HUD requirements under the ACC and 24 CFR chapter IX. In evaluating administrative capability under this factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; and the progress made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD.

(ii) The extent to which the applicant has implemented effective eviction and screening procedures to determine an individual's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202); implemented a plan to reduce vacancies; or undertaken other management practices to eliminate drug-related crime in its projects.

(iii) The extent of, and degree of success reflected by, the applicant's prior track record in implementing and managing HUD grant programs (including funding under this part or other grant programs such as CIAP, youth sports, child care, *etc.*), and other Federal drug-related grant programs.

(iv) The extent to which the applicant has already undertaken successful anti-drug-related crime efforts that will serve as the foundation for the proposed grant under this part.

(v) Such additional factors as the Secretary determines to be necessary and appropriate.

(4) *The extent to which the governmental jurisdiction, local law enforcement agencies, and the local community support the applicant's activities to eliminate drug-related crime.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which community representatives and local government officials will be actively involved in the implementation of the applicant's plan; and the extent to which the applicant has leveraged funds and other resources from other public and private sources, as evidenced by letters of commitment to provide funding, staff, or in-kind resources.

(ii) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD).

(iii) The extent to which an RMC or RC will undertake substantial program management responsibilities in implementing the applicant's plan. If neither a RMC or RC exists, this factor will evaluate instead the extent to which project residents will be involved in the implementation of the applicant's plan. (For purposes of this section, "substantial program management responsibilities" means participation by an RMC or RC in the implementation and evaluation of the applicant's strategy under § 961.15(b)(3).)

(iv) The extent to which an RMC or RC (or, where neither exists, project residents) is involved in the planning and development of the grant application and plan strategy, as reflected by the applicant's response to RMC/RC and other resident comments under § 961.18, and the certification of resident involvement provided at § 961.20(a)(7).

(v) Such additional factors as the Secretary determines to be necessary and appropriate.

(b) *Environmental review.* Grants under this part are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

Subpart D—Mini-Grants

§ 961.26 Purpose.

HUD may allocate up to ten percent of any grant funds appropriated under this part for mini-grants to eliminate drug-related crime on or about the real property comprising the public housing project. These grants, which are considerably smaller in amount than the grants awarded under subpart C of this part, are intended to provide PHAs and IHAs with seed money for the anti-drug-related crime activities listed at § 961.10, and to leverage community resources. Mini-grants are also intended to encourage the use of existing resources, and HUD will provide additional points under the grant selection process for applications that demonstrate a dollar-for-dollar match of the proposed mini-grant.

§ 961.28 Plan and application requirements.

(a) *Requirement of plan.* Each application for a grant under this subpart must include a plan for addressing the problem of drug-related crime on the premises of the public housing projects proposed for funding. The plan must contain the following elements:

(1) *Assessment of problem.* An assessment of the drug-related crime problem, and the problems associated with drug-related crime, in the projects administered by the applicant that are proposed for funding under this part. This assessment, which must describe the nature and scope of these problems, is intended to serve as the basis and rationale for determining the applicant's drug elimination strategy for the proposed projects. In addition, the assessment must establish a correlation between the applicant's demonstrated need in these projects and the activities proposed for assistance under this part.

(2) *Strategy for addressing problem.* A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance under this subpart. The discussion must include:

(i) A description of each component of the applicant's strategy, including activities to be undertaken with funding under this subpart;

(ii) The anticipated cost of each component of the strategy;

(iii) A timeframe for beginning and completing each component of the strategy;

(iv) An estimate of the results that each component of the strategy, as well as the overall strategy, is expected to achieve.

(v) A description of any dollar-for-dollar funds that will be available to match a mini-grant under this subpart;

(vi) The non-HUD resources that the PHA or IHA may reasonably expect to be available to continue the program at the end of the grant term. Alternatively, the applicant should demonstrate that the funded activities are a "stand alone" effort that will not require continued funding;

(vii) The role of RMCs, RCs (or, if neither exists, the role of project residents who will share with the applicant in developing the grant application or implementing the program) and any other entities (*e.g.*, local and State governments and community organizations) in planning and carrying out the strategy.

(b) *Application requirements.* To qualify for a grant under this part, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF–424 (including SF–424A);

(2)(i) The applicant must submit with its grant application a certification that it will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.); and

(ii) The applicant may submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule (24 CFR part 87). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan;

(3) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant amounts provided under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in these projects; and

(iii) A certification that the locality is meeting its obligations under the Cooperation Agreement with the PHA or IHA, particularly with regard to law enforcement services. Whether or not a locality is meeting its obligations under the Cooperative Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so.

(4) Statements of support from project residents, governmental or private entities of the applicant's drug-related crime effort, as follows:

(i) Letters of commitment in which these entities agree to provide financial or other resources (e.g., staff or inkind resources) to assist the applicant in its drug-elimination crime efforts under this subpart, and specifically mentioning any dollar-for-dollar matches; and

(ii) A certification by an RMC, RC (or, where neither exists, by project residents) that it has been involved in developing the grant application and will be involved in implementing the applicant's strategy.

(c) *Notice of fund availability.* HUD will publish Notices of Fund Availability (NOFAs) in the **Federal Register** as appropriate to inform the public of the availability of grant amounts under this subpart. The Notices will provide specific guidance with respect to the grant process, including the limits (if any) on maximum grant amounts, the maximum number of points to be awarded for each selection criterion under § 961.29, and the process for ranking and selecting grantees. The Notices will also include any additional factors that the Secretary has determined to be necessary and appropriate to implement the statutory selection criteria under § 961.29.

(Approved under Office of Management and Budget control number 2577–0124)

§ 961.29 Application selection.

(a) Applications for a mini-grant will be evaluated on the basis of the following selection criteria:

(1) *The extent of the problem of drug-related crime in the applicant's projects.* In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by crime statistics and other data provided under § 961.28(a)(1) on the number and nature of the drug-related crimes in the applicant's targeted projects;

(ii) Such additional factors as the Secretary determines to be necessary and appropriate.

(2) *The quality of an applicant's plan to address drug-related crime in the projects proposed for assistance.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant has concisely identified and described each component of the strategy;

(ii) The extent to which the applicant has provided information on the anticipated cost of each component of the strategy;

(iii) The extent to which the applicant has clearly specified a timeframe for beginning and completing each component of the strategy;

(iv) The extent to which the applicant has identified the results that each component of the strategy, as well as the overall strategy, is expected to achieve.

(v) The extent to which the applicant has identified resources that may reasonably be expected to be available at the end of the grant term to continue the anti-drug related crime effort, or has demonstrated that the funded activities will not require continued funding.

(vi) Such additional factors as the Secretary determines necessary and appropriate.

(3) *The applicant's capability to carry out its plan.* In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative HUD requirements under the ACC and 24 CFR Chapter IX. In evaluating administrative capability under this factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; and the progress made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD;

(ii) Such additional factors as the Secretary determines to be necessary and appropriate.

(4) *The extent to which the governmental jurisdiction, local law enforcement agencies, and the local community support the applicant's activities to eliminate drug-related crime.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which community representatives and local government officials will be actively involved in the implementation of the applicant's plan.

(ii) The extent to which the applicant is able to leverage funds from other public and private sources, particularly in the form of dollar-for-dollar matches.

(iii) The extent to which an RMC or RC (or, where neither exists, project residents) is involved in planning and developing the grant application and plan strategy, as reflected by the certification of resident involvement under § 961.28(b)(4)(B); and the extent to which an RMC or RC will undertake substantial program management responsibilities in implementing the applicant's plan. If neither a RMC or RC exists, this factor will evaluate instead the extent to which project residents will be involved in the implementation of the applicant's plan. (For purposes of this section, "substantial program management responsibilities" means participation by an RMC or RC in the implementation and evaluation of the applicant's strategy under § 961.15(b)(3).)

(iv) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant;

(v) Such additional factors as the Secretary determines to be necessary and appropriate.

(b) *Environmental review.* Grants under this part are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

Subpart E—Grant Administration

§ 961.30 Grant administration.

(a) *General.* The duty to use grant funds to eliminate drug-related crime in public housing projects in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the grantee. Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part and applicable laws.

(b) *Insurance.* Each grantee is required to obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants are required to assess their potential liability arising out of the employment or contracting of security personnel, investigators, and the establishment of the voluntary tenant patrols under § 961.10; to evaluate the qualifications and training of the individuals or firms undertaking these functions; and to consider any limitations on liability under State, local or tribal law. Grantees are also required to obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 961.10(e). These insurance costs are eligible program expenses. Subgrantees are required to obtain their own liability insurance.

(c) *Subgrants.* (1) A PHA or IHA may directly undertake any of the eligible activities under this part or it may contract with a qualified third party, including Resident Management Corporations (RMCs) and Resident Councils (RCs). Resident organizations that are neither RMCs or incorporated RCs may share with the PHA or IHA in the implementation of the program, but may not receive funds as subgrantees. A PHA's or IHA's Housing Development Corporation is not eligible to receive a subgrant under this part.

(2) Subgrants or cash contributions to RMCs or incorporated RCs may be made only under a written agreement executed between the PHA and the RMC or RC. The agreement must include a project budget that is acceptable to the PHA, and that is otherwise consistent with the PHA's grant application budget. The agreement must obligate the RMC or incorporated RC to permit the PHA to inspect and audit the RMC or RC financial records related to the agreement, and to account to the PHA on the use of grant funds, and on the implementation of project activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, and the scope of the subgrantee's authority; and the amount of insurance to be obtained by the PHA or IHA and the subgrantee to protect their respective interests.

(3) The PHA shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122 which apply to the acceptance and use of assistance by private nonprofit organizations. The PHA must also ensure that subgrantees are covered under the PHA's liability, or other equivalent, insurance. (Copies of these OMB Circulars are available from the Executive Office of the President, Publication Services, 725 17th Street NW., Room 2200, Washington, DC 20503.

(d) *Employment preference.* A PHA under this program shall give preference to the employment of public housing residents to carry out any of the eligible activities under this part, so long as such residents have comparable qualifications and training as non-public housing resident applicants. Except where the labor standards requirements of § 961.40(a)(1)(i) (A) or (C) are applicable, a public housing resident employed under this section may choose to receive compensation for his or her services either in the form of a salary, as a rent credit, or as payment of back rent owed to the PHA.

(e) *Applicability of OMB Circulars and HUD fiscal and audit controls.* The policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this part; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs and RCs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act (see HUD's implementing regulations at 24 CFR Part 44); and OMB Circular No. A–133). (Copies of these OMB Circulars are available from the Executive Office of the President, Publication Services, 725 17th Street, NW., Room 2200, Washington, DC 20503.

(f) *Grant term and obligation of grant funds.* Grantees are required to use grant amounts under this part according to their approved work plan, which generally shall not exceed 24 months. It is not required that the grantee obligate its funds within a particular fiscal year.

(g) *Sanctions.* If HUD determines that a grantee is not complying with the requirements of this part or of other applicable Federal law, or if a grantee fails to make satisfactory progress toward its drug elimination goals, as specified in its plan strategy under § 961.15(b)(3) and as reflected in its progress reports under § 961.35, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

§ 961.35 Periodic reports.

(a) *Regular grants.* (1) *Semi-annual progress reports.* Grantees must provide HUD with semiannual progress reports which evaluate the grantee's progress against its plan. These reports must include (but are not limited to) the following: any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress meets expectations; a discussion of the grantee's efforts in encouraging resident participation; a description of any other programs that may have been initiated or expanded as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(2) *Post-grant report.* A post-grant evaluation should be submitted to HUD within 90 days upon completion of the

plan, using at a minimum the evaluation criteria for the periodic reports.

(b) *Mini-grants.* A post-grant evaluation should be submitted to HUD within 60 days upon completion of the plan, and in which the grantee must evaluate its progress against its plan. The report must include (but is not limited to) a discussion of the following: any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, *etc.*) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress met expectations; and a discussion of the grantee's efforts to encourage resident participation.

(Approved under Office of Management and Budget Control Number 2577–0124

§ 961.40 Other Federal requirements.

Use of grant funds requires compliance with the following additional Federal requirements:

(a) *Labor standards.* (1) Where grant funds are used to undertake physical improvements to increase security under § 961.10(c), the following labor standards apply:

(i) The PHA and its contractors and subcontractors must pay the following prevailing wage rates, and must comply with all related rules, regulations and requirements:

(A) For laborers and mechanics employed in the development of the project, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(B) For architects, technical engineers, draftsmen and technicians employed in the development of the project, the HUD-determined prevailing wage rate; or

(C) For laborers and mechanics employed in carrying out nonroutine maintenance in the project, the HUD-determined prevailing wage rate. As used in this subsection, nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Nonroutine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not nonroutine maintenance.

(ii) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(2) The provisions of paragraph (a) of this section shall not apply to labor contributed under either of the following circumstances:

(i) Upon the request of any resident management corporation, HUD may, subject to applicable collective bargaining agreements, permit residents of a project managed by the resident management corporation to volunteer a portion of their labor;

(ii) A family selected for housing under the Indian Mutual Help Homeownership Opportunity Program may contribute labor toward the development cost of the project.

(b) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Use of debarred, suspended or ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(d) *Flood insurance.* Grants will not be awarded for proposed projects that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management agency (FEMA) as having special flood hazards unless:

(1)(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79; or

(ii) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(2) Flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(e) *Lead-based paint.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 965, subpart H (51 FR 27789–27791, August 1, 1986). This section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* The provisions of this section shall apply to all projects constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under §961.10(c).

(2) *Definitions.* For purposes of paragraph (f) of this section, the term "applicable surfaces" means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section:

(i) Installation of security devices;

(ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or

(iii) Any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(f) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR part 85, no person:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a pesonal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter.

(g) *Drug Free Workplace Act of 1988.* The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F.

(h) *Anti-lobbying provisions under section 319.* (1) On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act, Pub. L. 101–121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

(2) The certification and disclosure requirements apply to all grants in excess of $100,000. However, since grantees sometimes may expect to receive additional grant funds through reallocations, all potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(i) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR part 52, to the extent provided by Federal Register notice in accordance with 24 CFR 52.3.

(j) *Indian preference.* The provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) apply to IHAs. These provisions require to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

Dated: June 22, 1990.

Thomas Sherman,

Acting General Deputy Assisant Secretary for Public and Indian Housing.

[FR Doc. 90–15336 Filed 7–2–90; 8:45 am]

BILLING CODE 4210-33-M

federal register

Tuesday
July 3, 1990

Part VI

Department of Housing and Urban Development

Office of Public and Indian Housing

Public Housing Drug Elimination Program; Notice of Fund Availability—FY 1990

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public and Indian Housing

[Docket No. N-90-3085; FR-2815-N-01]

Public Housing Drug Elimination Program Notice of Fund Availability—FY 1990

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: HUD is announcing the availability of $97,409,000 in grant funds for the Public Housing Drug Elimination program (42 U.S.C. 11901 *et. seq.*) to provide grants to Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to eliminate drug-related crime in public housing projects. These grant funds were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1990 (Pub. L. 101–144, approved November 9, 1989), and the Department of Transportation and Related Agencies Appropriations Act of 1990 (Pub. L. 101–164, approved November 21, 1989).

To receive funding under the program, PHAs and IHAs are required to develop a plan for addressing drug-related crime, and to indicate how assisted activities will further the plan. Grant funds may be used for the following activities designed to eliminate drug-related crime: (1) Employment of security personnel and investigators; (2) reimbursement of local law enforcement agencies for the cost of providing additional security and protective services (e.g., over and above the level of services the locality is already obligated to provide under its Cooperation Agreement with the PHA); (3) physical improvements designed to enhance security in public housing projects; (4) support of public housing tenant patrols acting in cooperation with local law enforcement agencies; (5) innovative programs to reduce drug use in and around public housing projects; and (6) funding of Resident Management Corporations (RMCs) and incorporated Resident Councils (RCs) to develop security and drug abuse prevention programs involving site residents. For complete program requirements, applicants are advised to refer to the final rule for the Public Housing Drug Elimination program published elsewhere in today's Federal Register, in addition to the requirements in this Notice of Fund Availability (NOFA).

EFFECTIVE DATE: The requirements contained in this NOFA are effective as of July 3, 1990.

APPLICATION MATERIALS: To apply for a grant, PHAs must request an application package from the local HUD field office with jurisdiction over their agency. Indian Housing Authorities (IHAS) must request an application package from the HUD Office of Indian Housing with jurisdiction over their authority. Application packages are also available through the Drug Information Strategy Clearinghouse, by calling 1–800–245–2691. (See the appendix to this NOFA for a list of HUD field offices, and HUD Offices of Indian Housing.)

APPLICATION DEADLINE: The deadline for submission of a grant application under this NOFA is 5:15 p.m., Eastern Standard Time, on August 17, 1990; or postmarked no later than August 17, 1990. Applications must be received by the deadline at the local HUD field office (or, in the case of IHAs, in the HUD Office of Indian Housing) with jurisdiction over the PHA or IHA, Attention: Assisted Housing Management Branch Director.

FOR FURTHER INFORMATION CONTACT: Ed Johnson or Dave Tyus, Office for Drug Free Neighborhoods, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10241, Washington, DC. 20410, telephone (202) 708–1197 or 708–3502. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice of Fund Availability (NOFA) have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB control number 2577–0124.

I. Background

Congress authorized the Public Housing Drug Elimination Program under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*) ("the Act"). The Act authorizes HUD to make grants available to public housing agencies (PHAs) and Indian Housing Authorities (IHAs) for the purpose of eliminating drug-related crime in selected public housing projects.

The Department published a proposed rule for the program on June 21, 1989 (54 FR 26154). When funds were subsequently appropriated for the program under the Dire Emergency Supplemental Appropriations Act (Pub. L. 101–45, approved June 30, 1989), HUD published a NOFA to announce the availability of the $8.2 million appropriation (54 FR 38496).

This notice of fund availability is intended to inform PHAs and IHAs of the availability of $97,409,000 in grant funds for FY 1990 appropriated under the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1990 (Pub. L. 101–144, approved November 9, 1989), and the Department of Transportation and Related Agencies Appropriations Act of 1990 (Pub. L. 101–164, approved November 21, 1989).

While this NOFA contains a number of requirements related to the allocation of funds under these appropriation acts, applicants must refer to the complete program requirements for the Public Housing Drug Elimination program contained in the final rule published elsewhere in today's Federal Register.

II. NOFA Provisions

Section 1. Distribution of Grant Funds.

HUD is distributing grant funds under this NOFA to each of its 10 regional offices on the basis of a formula allocation. The formula allocation consists of an analysis within each HUD region of two variables: (1) the proportion of drug-related crime within each region, as compared to the national drug-related crime statistics; and (2) the number of public and Indian housing units within each region. This latter variable is triple-weighted under the formula to ensure that regions with large public housing populations receive adequate grant funds to address their drug-related crime problems.

HUD has determined the level of drug-related crime within each region based upon statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation, ("Uniform Crime Reports for Drug Abuse Violations—1988").

HUD is distributing grant funds under this NOFA to its 10 regional offices, in accordance with the following schedule:

HUD Region	Allocation
Region I	$5,320,481
Region II	17,206,350
Region III	9,801,432
Region IV	22,973,356
Region V	14,833,771
Region VI	9,942,597
Region VII	2,745,107
Region VIII	2,037,677
Region IX	10,119,213
Region X	2,429,017

Section 2. Submission of Grant Applications

2.1 Submission Deadline

The deadline for the submission of grant applications under this NOFA is 5:15 p.m., Eastern Standard Time, on

August 17, 1990, or postmarked no later than August 17, 1990.

2.2 Place of Submission

PHAs must submit an original plus one copy of their completed grant application by the submission deadline to the local HUD field office with jurisdiction over their agency. IHAs must submit their completed grant application by the submission deadline to the HUD Office of Indian Housing with jurisdiction over their authority. The field office copy of the grant application determines whether an application has been submitted in a timely manner.

PHAs and IHAs should also concurrently forward a copy of their application materials to the HUD regional office with jurisdiction over the PHA or IHA. (A complete listing of HUD regional and field offices, including HUD Offices of Indian Housing, is provided in the appendix to this NOFA.)

2.3 Late Applications, Modification and Withdrawal of Applications

(a) Any application received at the HUD Field office (or, in the case of IHAs, at the HUD Office of Indian Housing) after the exact date and time specified for receipt will not be considered unless it is received before award is made and—

(1) It was mailed on or before 12:00 midnight of the application deadline date. In such cases, applicants must use registered, certified, or U.S. Postal Service Express Mail Next Day—Post Office to Addressee, to substantiate the date of mailing. The only evidence to establish the date of mailing is the label and/or postmark on the wrapper or on the original receipt from the U.S. Postal Service. (The term "postmark" means a printed, stamped, or otherwise placed impression that is readily identifiable without further action as having been suplied and affixed by the U.S. Postal Service.) If neither shows a legible date, and the application is received after the date specified, the application shall be deemed to have been mailed late. Private metered postmarks (such as those from Federal Express or other courier companies) shall not be acceptable proof of the date of mailing; or

(2) It was the only application received.

(b) Hand-delivered applications must be received in the designated office by the application deadline date and time (documentation is the notation on the application wrapper of the time and date received by the designated office).

(c) Facsimiled applications are not authorized and are not acceptable.

(d) Any modification of an application is subject to the same conditions as those specified in paragraphs (a) and (b) of this provision.

(e) Notwithstanding the above, a modification of an otherwise successful application, prior to the deadline or after approval, which makes its terms more favorable the HUD will be considered and may be accepted.

(f) Applications may be withdrawn by written notice or telegram (including mailgram) received at any time prior to award. Applications may be withdrawn in person by an applicant or their authorized representative, provided their identity is made known and they sign a receipt for the application prior to award.

Section 3. Grant Application Process

3.1 Ranking

Each application for a grant award that is submitted in a timely manner to the local HUD field office (or, in the case of IHAs, to the appropriate HUD Office of Indian Housing), and that otherwise meets the requirements under § 961.25 of the final rule for this program, will be evaluated in accordance with the selection criteria under section 3.2 of this NOFA. Applications will be jointly evaluated and scored by the HUD field and regional offices with jurisdiction over the housing authority. Applications from IHAs will be jointly evaluated and scored by the HUD Office of Indian Housing and the regional office with jurisdiction over the housing authority. An application must receive a minimum score of 75 points out of the maximum of 125 points awardable under this competition to be eligible for funding. Each HUD regional office will rank the eligible applications for its region based upon their overall rating scores. Grants will be awarded by each HUD regional office to the highest-ranked applications within its region.

3.2 Selection Criteria

Each application submitted by a PHA or IHA for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *The extent of the problem of drug-related crime in the applicant's projects.* (Maximum points: 40.) In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by:

(A) Crime statistics and other data provided under § 961.15(b)(l)(i) on the number and types of drug-related crimes committed within the applicant's targeted projects; trend data indicating an increase or decrease in drug-related crime over a period of time; and descriptive data on the types of offenders committing drug-related crime in the applicant's projects (such as age, residence, etc.).

(B) To the extent that data under § 961.15(b)(l)(i) are not available, the applicant may provide information derived from resident/staff surveys or on-site reviews, or from the applicant's own records or those of other local agencies, on the extent of drug-related crime and the problems associated with drug-related crime, in the applicant's projects. This information may include (but is not limited to) the number of lease terminations or evictions for drug-related criminal activity; emergency room admissions for drug use or drug-related crime; vandalism costs and vacancies attributable to drug related crime; the number of residents placed in treatment for substance abuse; the school drop-out rates and absenteeism rates for youth, etc.

(C) In awarding points under paragraphs (l(i)(A) and (B) of this section, HUD will evaluate the extent to which the applicant has provided raw data that reflect a severe drug-related crime problem, both in terms of the frequency and nature of the drug-related crime incidents, and the problems associated with drug-related crime, in the projects proposed for funding; the extent to which such data are meaningfully grouped by the variables listed under paragraphs (l)(i)(A) and (B) of this section; and the extent to which such data reflect an increase in drug-related crime over a period of time in the projects proposed for assistance. (Maximum points under paragraphs (l)(i)(A) and (B) of this section: 25).

(ii) The relative severity of the drug-related crime in the applicant's projects, as reflected in the statistics submitted under paragraph (l)(i)(A) of this section, in comparision to other applications submitted in the region for funding under this part (Maximum points: 5.)

(iii) The extent to which the applicant has analyzed the data compiled under paragraphs (l)(i)(A) and (B) of this section, and has clearly articulated its needs for reducing drug-related crime in the projects proposed for assistance. (Maximum points: 10.)

(2) *The quality of an applicant's plan to address drug-related crime in the projects proposed for assistance.* (Maximum points: 25.) In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant establishes a relationship between its drug-related crime problem (as identified in its plan assessment under

§ 961.15(b)(1)(i) and (ii) and its strategy for eliminating drug-related crime under § 961.15(b)(3); the extent to which the applicant has considered and articulated its strategy goals and objectives; the extent to which the applicant's strategy provides for a comprehensive approach to eliminating drug-related crime in its projects (e.g., the strategy includes multiple management practices, enforcement/security techniques, and a combination of intervention, referral and prevention programs); and the extent to which funding under this part will be targeted to the applicant's identified needs. (Maximum points: 10.)

(ii) The extent to which the applicant's strategy is realistic, given the amount of funding requested under this part in relation to the overall strategy, and the timeframe indicated by the applicant for beginning and completing each component of the strategy; and the extent to which the applicant provides a cost analysis for each component of its strategy and describes the financial and other resources (under this part and other sources) that may reasonably be expected to be available to carry out each component; describes the activities to be funded under this part and indicates how such activities will be coordinated with, and complemented by, current services; and describes how funding decisions were reached. (Maximum points: 5.)

(iii) The extent to which the applicant has developed an evaluation process that includes measures it believes to be critical in evaluating the success of the plan; the extent to which the applicant has described in its plan the information to be gathered, and the method to be used to gather this information; and the extent to which the applicant relates the evaluation process to its assessment of the drug-related crime problem in the targeted projects (e.g. tracking of changes in identified crime statistics). (Maximum points: 5.)

(iv) The extent to which the plan identifies non-HUD resources that the applicant reasonably expects to be available for the continuation of the program at the end of the grant term; (Maximum points: 5.)

(3) *The applicant's capability to carry out its plan.* (Maximum points: 25). In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative HUD requirements under the ACC and 24 CFR Chapter IX. In evaluating administrative capability under this factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; and the progress made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD. (Maximum points: 10.)

(ii) The extent to which the applicant has implemented effective eviction and screening procedures to determine an individual's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202); implemented a plan to reduce vacancies; or undertaken other management practices to eliminate drug-related crime in its projects; (Maximum points: 5.)

(iii) The extent of, and degree of success reflected by, the applicant's prior track record in implementing and managing HUD grant programs (including funding under this part or other grant programs such as CIAP, youth sports, child care, etc.), and other Federal drug-related grant programs. (Maximum points: 5.)

(iv) The extent to which the applicant has already undertaken successful anti-drug related crime efforts that will serve as the foundation for the proposed grant under this part. (Maximum points: 5.)

(4) *The extent to which the governmental jurisdiction, local law enforcement agencies, and the local community support the applicant's activities to eliminate drug-related crime.* (Maximum points: 35). In assessing this criterion, HUD will consider the following factors:

(i) The extent to which community representatives and local government officials will be actively involved in the implementation of the applicant's plan; and the extent to which the applicant has leveraged funds and other resources from other public and private sources, as evidenced by letters of commitment to provide funding staff, or in-kind resources. (Maximum points: 10.)

(ii) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD). (Maximum points: 10.)

(iii) The extent to which an RMC or RC will undertake substantial program management responsibilities in implementing the applicant's plan. If neither a RMC or RC exists, this factor will evaluate instead the extent to which project residents will be involved in the implementation of the applicant's plan. (For purposes of this section, "substantial program management responsibilities" means participation by an RMC or RC in the implementation and evaluation of the applicant's strategy under § 961.15(b)(3).) (Maximum points: 10.)

(iv) The extent to which an RMC or RC (or, where neither exists, project residents) is involved in the planning and development of the grant application and plan strategy, as reflected by the applicant's response to RMC/RC and other resident comments under §§ 961.18, and the certification of resident involvement provided at § 961.20(a)(7) of the final rule for this program. (Maximum points: 5.)

Section 4. Maximum Grant Amounts

The maximum grant amounts under this NOFA are based upon a sliding scale, using either an overall cap to the grant award or a maximum per unit cap, depending upon the number of units in a housing authority. HUD's rationale for using this sliding scale is that larger PHAs have more efficient economies of scale.

Under the schedule listed below, a housing authority with 20,000 units could apply for a maximum grant award of $2,000,000, i.e. 20,000 units × $100 per unit = $2,000,000, which is greater than the maximum flat grant award of $250,000.

The maximum grant awards under this NOFA are as follows, although HUD has discretion to determine the amount of any grant award:

(a) For housing authorities with 0–99 units: the maximum grant award is $50,000;

(b) For housing authorities with 100–499 units: the maximum grant award is $100,000;

(c) For housing authorities with 500–49,999 units: the maximum grant award is either a maximum cap of $100 per unit, or a maximum grant award of $250,000, whichever is greater;

(d) For housing authorities with 50,000 or more units: the maximum grant award is a maximum cap of $75 per unit.

Section 5. Reallocation of Grant Funds

Any grant funds under this NOFA that are allocated to a region, but that are not reserved for obligation for specific grantees within the time period to be specified by the Secretary for this fiscal year, must be returned to HUD Headquarters for reallocation to other regions. The reallocation of these funds to the regions shall be based upon the formula allocation method described at Section 1 of this NOFA, except that HUD will omit from the formula

allocation those figures representing the extent of drug-related crime and the number of public housing units for the region that returned the grant funds. Regions that receive reallocated funds will use those funds to award grants to eligible applicants that did not get funded under the initial competition held under this NOFA. These grants will be awarded by each HUD regional office to the highest-ranked remaining applicants in the region that scored at least 75 points under the selection criteria at Section 3.2.

Section 6. Other Matters

On February 26, 1990, the Department published an interim final rule at 55 FR 6736 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior and Related Agencies Appropriations Act (31 U.S.C. 1352) approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans, unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The certification and disclosure requirements apply to all grants in excess of $100,000. However, since grantees may receive additional grant funds through reallocations, all potential grantees are required to submit this certification, and disclosure, if required. Potential grantees should refer to the February 26, 1990 interim final rule at 55 FR 6736 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification and disclosure.

A Find of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this NOFA have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that encourages PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public housing project residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is not necessary, however, since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

Federalism impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this NOFA have "federalism implications" within the meaning of the Order. The NOFA implements a program that encourages PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to PHAs and IHAs to help them carry out their plans. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their projects, thereby strengthening their role as instrumentalities of the States. Further review under the Order is unnecessary, however, since the NOFA generally tracks the statute and involves little implementing discretion.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 22, 1990.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

Appendix

HUD Regional and Field Offices

Region I

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, Massachusetts 02222–1092

Hartford, Connecticut Office

HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860

Manchester, New Hampshire Office

HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487

Providence, Rhode Island Office

HUD—Providence Office, 330 John O. Pastore Federal Building, and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1745

Bangor, Maine Office

HUD—Bangor Office, Professional Building, Casco Northern Bank Building, 23 Main Street, Bangor, Maine 04401–4318

Burlington, Vermont Office

HUD—Burlington Office, Federal Building—Room B311, 11 Elmwood Avenue, Post Office Box 1104, Burlington, Vermont 05402–1104

Region II

Jurisdiction: New York, New Jersey, Puerto Rico, Virgin Islands

New York Regional Office

HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068

Buffalo, New York Office

HUD—Buffalo Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780

Caribbean Office

HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804

Camden, New Jersey Office

HUD—Camden Office, 519 Federal Street, Camden, New Jersey 08103–9998

Newark, New Jersey Office

HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504

Albany, New York Office

HUD—Albany Office, Leo W. O'Brien Federal Building, North Pearl Street and Clinton Avenue, Albany, New York 12207–2395

Region III

Jurisdiction: Pennsylvania, Washington, D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392

Washington, D.C. Office

HUD—Washington, D.C. Office, 451 7th Street, SW., Room 3158, Washington, DC 20410–5500

Baltimore, Maryland Office

HUD—Baltimore Office, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202–1865

Pittsburgh, Pennsylvania Office

HUD—Pittsburgh Office, 412 Old Post Office Courthouse Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219–1906

Richmond, Virginia Office

HUD—Richmond Office, 400 North 8th Street, Richmond, Virginia 23240

Charleston, West Virginia Office

HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795

Wilmington, Delaware Office

HUD—Wilmington Office, 844 King Street, Wilmington, Delaware 19801

Region IV

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Atlanta, Georgia Regional Office

HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388

Birmingham, Alabama Office

HUD—Birmingham Office, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209

Louisville, Kentucky Office

HUD—Louisville Office, 601 West Broadway, Post Office Box 1044, Louisville, Kentucky 40201–1044

Jackson, Mississippi

HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 W. Capitol Street, Room 910, Jackson, Mississippi 39269–1096

Greensboro, North Carolina

HUD—Greensboro Office, 415 North Edgeworth Street, Greensboro, North Carolina 27401–2107

Columbia, South Carolina Office

HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, South Carolina 29201–2480

Knoxville, Tennessee Office

HUD—Knoxville Office, John J. Duncan Federal Bldg., 710 Locust Street, SW., Knoxville, Tennessee 37902–2526

Memphis, Tennessee Office

HUD—Memphis Office, 200 Jefferson Avenue, Suite 1200, Memphis, Tennessee 38103–2335

Nashville, Tennessee Office

HUD—Nashville Office, 251, Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803

Jacksonville, Florida Office

HUD—Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202–4303

Coral Gables, Florida Office

HUD—Coral Gables Office, Gables One Tower, 1320 S. Dixie Hwy., Coral Gables, Florida 33146–2911

Orlando, Florida Office

HUD—Orlando Office, Langley Building, 3751 Maguire Boulevard, Suite 270, Orlando, Florida 32803–3032

Tampa, Florida Office

HUD—Tampa Office, 700 Twiggs Street, Room 527, P.O. Box 172910, Tampa, Florida 33672–2910

Region V

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chigago, Illinois Regional Office

HUD—Chicago Regional Office, 626 West Jackson Boulevard, Chicago, Illinois 60606

Detroit, Michigan Office

HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592

Indianapolis, Indiana Office

HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526

Grand Rapids, Michigan Office

HUD—Grand Rapids Office, 2922 Fuller Avenue, NE., Grand Rapids, Michigan 49505–3409

Minneapolis-St. Paul, Minnesota

HUD—Minneapolis-St. Paul Office, 220 Second Street, South, Bridge Place Building, Minneapolis, Minnesota 55401–2195

Cincinnati, Ohio Office

HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main Street, Cincinnati, Ohio 45202–3253

Cleveland, Ohio Office

HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, Ohio 44115–1832

Columbus, Ohio Office

HUD—Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499

Milwaukee, Wisconsin Office

HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289

Flint, Michigan Office

HUD—Flint Office, Gil Sabuco Building, 352 South Saginaw Street, Room 200, Flint, Michigan 48502–1953

Springfield, Illinois Office

HUD—Springfield Office, 524 S 2nd Street, Suite 672, Springfield, Illinois 62701–1774

Region VI

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas Regional Office

HUD—Fort Worth Regional Office, 1600 Throckmorton, Post Office Box 2905, Fort Worth, Texas 76113–2905

Dalla, Texas Office

HUD—Dallas Office, 555 Griffin Square Building, 525 Griffin Street, Room 106, Dallas, Texas 75202–5007

Albuquerque, New Mexico

HUD—Albuquerque Office, 625 Truman Street, NE., Albuquerque, New Mexico 87110–6443

Houston, Texas Office

National Bank of Texas Building, 2211 Norfolk, Suite 300, Houston, Texas 77098–4096

Lubbock, Texas Office

HUD—Lubbock Office, Federal Building, 1205 Texas Avenue, Lubbock, Texas 79401–4093

San Antonio, Texas Office

HUD—San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563

Little Rock, Arkansas Office

HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201–3523

New Orleans, Louisiana Office

HUD—New Orleans Office, Fisk Federal Building, 1661 Canal Street—P.O. Box 70288, New Orleans, Louisiana 70172–2887

Shreveport, Louisiana Office

HUD—Shreveport Office, New Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101–3077

Oklahoma City, Oklahoma Office

HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202

Tulsa, Oklahoma Office

HUD—Tulsa Office, Robert S. Kerr Building, 440 South Houston Avenue, Room 200, Tulsa, Oklahoma 74127–8923

Region VII

Jurisdiction: Iowa, Kansas, Missouri, Nebraska

Kansas City, Missouri Regional Office

HUD—Kansas City Regional Office, Professional Building, 1103 Grand Avenue, Kansas City, Missouri 64106–2496

Omaha, Nebraska Office

HUD—Omaha Office, Braiker/Brandeis Building, 210 South 16th Street, Omaha, Nebraska 68102–1622

St. Louis, Missouri Office

HUD—St. Louis Office, 210 North Tucker Boulevard, St. Louis, Missouri 63101–1997

Des Moines, Iowa Office

HUD—Des Moines Office, Federal Building, 210 Walnut Street, Room 259, Des Moines, Iowa 50309–2155

Topeka, Kansas Office

HUD—Topeka Office, Frank Carlson Federal Building, 444 S.E. Quincy, Room 370, Topeka, Kansas 66683–0001

Region VIII

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado Regional Office

HUD—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349

Salt Lake City, Utah Office

HUD—Salt Lake City Office, 324 South State Street, Suite 220, Salt Lake City, Utah 84111–2321

Helena, Montana Office

HUD—Helena Office, Federal Building, Drawer 10095, 301 S. Park, Room 340, Helena, Montana 59626–0095

Sioux Falls, South Dakota Office

HUD—Sioux Falls Office, 300 North Dakota Avenue, Suite 116 Courthouse Plaza, Sioux Falls, South Dakota 57102–0311

Fargo, North Dakota Office

HUD—Fargo Office, Federal Building, Post Office Box 2483, 653 2nd Avenue, North-Room 300, Fargo, North Dakota 58108–2483

Casper, Wyoming Office

HUD—Casper Office, 4225 Federal Office Building, 100 East B Street, Post Office Box 580, Casper, Wyoming 82602–1918

Region IX

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California Regional Office

HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448

Honolulu, Hawaii Office

HUD—Honolulu Office, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850–4991

Los Angeles, California Office (Category A)

HUD—Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, California 90015–3801

Sacramento, California Office

HUD—Sacramento Office, 777 12th Street, Suite 200, Post Office Box 1978, Sacramento, California 95814–1977

Reno, Nevada Office

HUD—Reno Office, 1050 Bible Way, Box 4700, Reno, Nevada 89505–4700

San Diego, California Office

HUD—San Diego Office, Federal Office Building, 880 Front Street, Room 563, San Diego, California 92188–0100

Las Vegas, Nevada Office

HUD—Las Vegas Office, 1500 East Tropicana Avenue, 2nd Floor, Las Vegas, Nevada 89119–6516

Phoenix Office

HUD—Phoenix Office, One North First Street, Suite 300, Post Office Box 13468, Phoenix, Arizona 85002–3468

Santa Ana, California Office

HUD—Santa Ana Office, 34 Civic Center Plaza, Box 12850, Santa Ana, California 92712–2850

Tucson Office

HUD—Tucson Office, 100 North Stone Ave., Suite 410, Post Office Box 2648, Tucson, AZ 86701–1467

Fresno, California Office

HUD—Fresno Office, 1630 E. Shaw Avenue, Suite 138, Fresno, California 93710–8193

Region X

Jurisdiction: Alaska, Idaho, Oregon, Washington

Seattle, Washington Office

HUD—Seattle Regional Office, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2058

Portland, Oregon Office

HUD—Portland Office, Cascade Building, 520 SW Sixth Avenue, Portland, Oregon 97204–1596

Boise, Idaho Office

HUD—Boise Office, Federal Building/USCH, 550 West Fort Street, Box 042, Boise, Idaho 83724–0420

Spokane, Washington Office

HUD—Spokane Office, Farm Credit Bank Building, 8th Floor East, West 601 1st Avenue, Spokane, Washington 99204–0317

Anchorage, Alaska Office

HUD—Anchorage Office, 222 W. 8th Avenue, #64, Anchorage, Alaska 99513–7537

Shreveport, Louisiana Office

HUD—Shreveport Office, New Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101–3077

Oklahoma City, Oklahoma Office

HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202

Tulsa, Oklahoma Office

HUD—Tulsa Office, Robert S. Kerr Building, 440 South Houston Avenue, Room 200, Tulsa, Oklahoma 74127–8923

HUD Offices of Indian Housing

1. HUD Regions I through V, and Iowa are served by:

HUD Chicago Office of Indian Programs, 5PI, 626 West Jackson Blvd., Chicago, Illinois 60606

2. Oklahoma, Kansas, Missouri, Texas, Arkansas, and Louisiana are served by:

HUD Oklahoma City Division of Indian Programs, 6.7P, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102

3. HUD Region VIII and Nebraska are served by:

HUD Denver Office of Indian Programs, 8P, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202

4. HUD Region IX and New Mexico are served by:

HUD Phoenix Office of Indian Programs, 90IP, One North First Street, Suite 400, Phoenix, Arizona 85004

5. Region X (except Alaska) is served by:

HUD Seattle Office of Indian Programs, 10PI, Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101

6. Alaska is served by:

HUD Anchorage Indian Housing Division, 10.1PI, 222 W. 8th Avenue, #64, Anchorage, Alaska 99513

[FR Doc. 90–15335 Filed 7–2–90; 8:45 am]

BILLING CODE 4210–33–M

Reader Aids

Federal Register

Vol. 55, No. 128

Tuesday, July 3, 1990

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

49 CFR

Proposed Rules:
571.....27330

50 CFR

Proposed Rules:
17.....27270
683.....27479
685.....27481

LIST OF PUBLIC LAWS

Last List June 28, 1990

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

S.J. Res. 245/Pub. L. 101-314

Designating July 3, 1990, as "Idaho Centennial Day". (June 28, 1990; 104 Stat. 281; 1 page) Price: $1.00

H.J. Res. 575/Pub. L. 101-315

To designate June 25, 1990, as "Korean War Remembrance Day". (June 28, 1990; 104 Stat. 282; 2 pages) Price: $1.00

S.J. Res. 264/Pub. L. 101-316

To commemorate the 50th anniversary of the National Sheriffs' Association. (June 28, 1990; 104 Stat. 284; 1 page) Price: $1.00

S.J. Res. 246/Pub. L. 101-317

Calling upon the United Nations to repeal General Assembly Resolution 3379. (June 29, 1990; 104 Stat. 285; 2 pages) Price: $1.00